

1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF NEW YORK
3 No. 15-cv-4804

4 - - - - -x
5 JOANNE HART,

6 Plaintiff,

7 -against-

8 BHH, LLC d/b/a BELL + HOWELL and VAN HAUSER,
9 LLC,

10 Defendants.
11 - - - - -x
12
13

14 EXAMINATION BEFORE TRIAL of JEFFREY
15 MISHAN, the on behalf of the Defendant in
16 the above-entitled action, held at 888
17 Seventh Avenue, New York, New York,
18 Wednesday, February 3, 2016, commencing at
19 10:00 a.m., taken before Jessica R.
20 Taft, a Notary Public of the State of New
21 York, pursuant to Order and stipulations
22 between Counsel.
23
24

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1 APPEARANCES:	1 JEFFREY MISHAN, having
2	2 been first duly affirmed by a Notary Public of
3 BURSOR & FISHER, P.A.	3 the State of New York, upon being examined,
4 Attorney for Plaintiff	4 testified as follows:
5 888 Seventh Avenue	5 EXAMINATION BY
6 New York, New York 10019	6 MR. KOPEL:
7 BY: YITZCHAK KOPEL, ESQ.	7 Q Good morning, Mr. Mishan.
8	8 Can you please state your name
9	9 and address?
10 LEAHY, EISENBERG & FRAENKEL, LTD	10 A Jeffrey Mishan. Which address?
11 Attorney for Defendants	11 Q Let's start with your home address.
12 33 W. Monroe Street, Suite 1100	12 A 1431 East 8th.
13 Chicago, IL 60603-5317	13 Q Is that in Brooklyn?
14 BY: SCOTT WING, ESQ.	14 A Yes.
15	15 Q Please state your business address.
16	16 A 230 Fifth Avenue.
17	17 Q And is there a suite number?
18	18 A Suite 800.
19	19 Q What business entities are
20	20 located at that address?
21	21 A E. Mishan & Sons, Van Hauser,
22	22 Wellquest, and I believe BHH.
23	23 Q Any others?
24	24 A Not that I know of.
25	25 Q You are a VP at E. Mishan & Sons,
Page 2	Page 4
1 STIPULATIONS	1 correct?
2 IT IS HEREBY STIPULATED AND AGREED, by	2 A Correct.
3 and among counsel for the respective parties	3 Q And you are also a VP at Van
4 hereto, that the filing, sealing and	4 Hauser, correct?
5 certification of the within deposition shall	5 A Yes.
6 be and the same are hereby waived;	6 Q And you are a managing partner at
7 IT IS FURTHER STIPULATED AND AGREED that	7 BHH, correct?
8 all objections, except as to form of the	8 A Yes.
9 question, shall be reserved to the time of	9 Q Do you take a salary in your
10 the trial;	10 capacity as a VP from E. Mishan & Sons?
11	11 A Yes.
12	12 Q Do you take a salary from Van Hauser?
13	13 A No.
14	14 Q Do you take a salary from BHH?
15	15 A No.
16	16 Q Do any employees take a salary
17	17 from BHH?
18	18 A No.
19	19 Q Do any employees take a salary
20	20 from Van Hauser?
21	21 A No.
22	22 Q Do either of BHH or Van Hauser
23	23 have any employees of their own?
24	24 A More of sharing employees of
25	25 Emson. When I say Emson, it is E. Mishan & Sons.
Page 3	Page 5

<p>1 Q Understood. So Van Hauser and 2 BHH are operated solely by Emson employees, 3 correct? 4 A No. We have managing partners in 5 BHH and Van Hauser you have the -- I don't 6 know what it is called -- the owners or 7 shareholders. Those are the people that are 8 involved. And then at times we could use 9 employees from Emson from time to time to 10 do, to assist. 11 Q Are there any written agreements 12 between Emson and either Van Hauser or BHH 13 regarding the use of Emson employees? 14 A Not that I know of. 15 Q Are there any oral agreements 16 regarding that topic? 17 A State the question. Oral agreements 18 regarding... 19 Q Are there any oral agreements 20 regarding the use of Emson employees between 21 Emson and either Van Hauser or BHH? 22 A Not that I know of. 23 Q Do either Van Hauser or BHH 24 compensate Emson for the use of its employees? 25 A Van Hauser or BHH?</p> <p style="text-align: right;">Page 6</p>	<p>1 it in equal portions? 2 A I believe so, yes. 3 Q Who are the shareholders of BHH? 4 A Eddie, Steven, a myself. 5 Q Al Mishan is not a shareholder of 6 BHH, correct? 7 A Correct. 8 Q The three of you own BHH in equal 9 portions? 10 A When you say own, we are 11 shareholders. It is using the terminology loosely. 12 Q Correct. 13 A Correct, yes, equal. 14 Q Is there a board of directors for 15 Emson, Van Hauser or for BHH? 16 A I don't know how one would 17 determine board of directors. You have 18 president, you have vice president. If that 19 is considered board of directors, I don't know. 20 Q Okay. Have any of these three 21 companies ever held shareholder meetings? 22 A No. 23 Q Do you take dividends from Emson? 24 A Dividends? Not, I don't know if 25 that would be the terminology. I mean</p> <p style="text-align: right;">Page 8</p>
<p>1 Q Correct. 2 A I am not sure. 3 Q Who would know the answer to that? 4 A Maybe one of my brothers, Eddie 5 Mishan or Steven Mishan. 6 Q Who are the shareholders of Emson? 7 A Eddie Mishan, Steven Mishan, 8 myself and Al Mishan. 9 Q Do each of the four of you own 10 Emson in equal proportions? 11 A No. 12 Q What is the proportional break-up? 13 A I don't know exact, but I think 14 my brother has, I think Eddie has a little 15 bit more than me. I believe Steve and 16 myself are about equal, and Al is less. 17 Q Are the shareholders of Van 18 Hauser the same shareholders as Emson? 19 A No. 20 Q Who are the shareholders of Van Hauser? 21 A Eddie Mishan, Steven, and myself. 22 Q So Al Mishan is not a shareholder of Van 23 Hauser, correct? 24 A From my recollection, no. 25 Q Do each of the three of you own</p> <p style="text-align: right;">Page 7</p>	<p>1 profits, are you referring to profits? 2 Q Do you take money from Emson 3 other than the salary that you take? 4 A Well, they would have profits. 5 If they determine profits at the end of the 6 year, then one could take profits. 7 Q Do you take profits in proportion 8 amount to your ownership? 9 A I don't know. We might leave it 10 in the company, take some money out. I 11 don't know exactly. 12 Q Who decides how much profits you 13 take from Emson at the end of the year? 14 A When you are saying take -- in 15 other words, we would determine, and then 16 really it's between Eddie, Steven, the four 17 of them. 18 Q So Eddie, Steven, yourself and 19 Al, correct? 20 A No. Well, in regards to, again, 21 as I mentioned, you could determine what the 22 profits are and then leave the money in the 23 company or maybe take the money out of the 24 company. But it's, as I mentioned, Eddie 25 and Steven more involved in working,</p> <p style="text-align: right;">Page 9</p>

1 determining, you know, the profits and
 2 deciding do we keep the money in the
 3 company, or take money out.
 4 Q But there is no settlement
 5 agreement for the division of profits from
 6 Emson, correct?
 7 A I am not sure what you mean by
 8 settlement agreement, but we have percentages.
 9 Q But it differs from year-to-year
 10 and that is a discretionary decision made
 11 each year, correct?
 12 A Well, percentages remain what
 13 they are. And profits could be X amount for
 14 one year, and it could be a different amount
 15 for another year.
 16 Q Do you take dividends from Van
 17 Hauser?
 18 A Using the terminology dividends,
 19 again, I am not working with that terminology.
 20 Q Sure. Do you take profits from
 21 Van Hauser?
 22 A I am not sure if it is considered
 23 profits or could it be loan. I am not sure
 24 of the exact terminology. From time to
 25 time, we can take money out of Van Hauser, yes

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1 Q Have you taken loans from Van
 2 Hauser?
 3 A I am not sure if that is the
 4 terminology. I am not sure of the terminology.
 5 Q Okay. Do you, have you paid the
 6 money back to Van Hauser that you have taken
 7 out of it?
 8 A I said, again, I am not sure if
 9 it is a loan or whatnot. It is money in the
 10 company, and we could take the money out or
 11 leave the money in.
 12 Q Understood. But has Van Hauser
 13 loaned money to you that you have paid back
 14 to it?
 15 A I am using the terminology loan
 16 loosely. I will take back that terminology.
 17 Sometimes we have taken money out
 18 of Van Hauser, to correct myself.
 19 Q Okay, I just want to be clear.
 20 So, so you are saying that you have not
 21 taken money from Van Hauser that you have
 22 paid back to Van Hauser?
 23 A I haven't done where I have taken
 24 money out of Van Hauser and paid back to Van
 25 Hauser, correct.

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1 Q How about BHH, do you take
 2 dividends from BHH? By dividends, I mean profit.
 3 A Not that I recall in a long time.
 4 Q To your knowledge, does anyone
 5 take profits from BHH?
 6 A Not to my knowledge.
 7 Q So to your knowledge are all
 8 profits from BHH reinvested into BHH?
 9 A Well, BHH is a licensing brand,
 10 Bell + Howell. Repeat your question, please.
 11 MR. KOPEL: Can you repeat the
 12 question, please?
 13 (Thereupon, the record was read
 14 back by the reporter as recorded
 15 above.)
 16 THE WITNESS: I don't know how
 17 they determine the profits because I
 18 don't determine, so I don't know if it
 19 is, what is considered profit and they
 20 reinvest. So I can't really answer
 21 that question.
 22 BY MR. KOPEL:
 23 Q BHH licenses out the Bell + Howell brand,
 24 correct?
 25 A Correct.

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1 Q Does BHH have any other function?
 2 A Not to my knowledge, no.
 3 Q Does BHH have any overhead or expenses?
 4 A As I mentioned before, if they use an
 5 employee, I don't know if that is considered an
 6 overhead or expense.
 7 Q But to your knowledge, BHH does
 8 not pay Emson for its use of employees, correct?
 9 A As I said, I wasn't sure of that
 10 aspect.
 11 Q Let me take a step back and just
 12 introduce myself.
 13 My name is Yitzchak Kopel. I am
 14 a lawyer, and I represent Joanne Hart, who
 15 is a plaintiff in a class action lawsuit
 16 against BHH, LLC and Van Hauser, LLC.
 17 I am going to be asking you some
 18 questions today in connection with that
 19 lawsuit. Do you understand that?
 20 A Yes.
 21 Q Now, I believe that you sat for a
 22 deposition on October 15th of 2015, in another class
 23 action lawsuit titled as Steigerwald v. BHH LLC,
 24 correct?
 25 A I don't know the exact date but,

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4 (Pages 10 - 13)

<p>1 yes, it was a deposition. 2 Q Have you sat for a deposition 3 since then? 4 A No. 5 MR. KOPEL: I would like to ask 6 the court reporter to mark as 7 Exhibit 1 the transcript from an 8 action styled as Jeanne Steigerwald 9 versus BHH, LLC, et al. 10 (Thereupon, the Transcript from 11 action styled Jeanne Steigerwald 12 versus BHH LLC, et al, was marked 13 Deposition Exhibit 1 for 14 Identification, as of this date.) 15 BY MR. KOPEL: 16 Q Mr. Mishan, take as long as you 17 would like to look at the document, and let 18 me know when you are ready to proceed. 19 A It is over a hundred pages. Do 20 you want me to look at a hundred pages? 21 Q No, I didn't ask you to do that. 22 A Uh-huh. So what are you asking? 23 Q I haven't begun my questions. 24 Are you ready? 25 A But what is your question? You</p> <p style="text-align: right;">Page 14</p>	<p>1 best of my recollection. 2 Q Sitting here today, are you aware 3 of anything, or has anything come to mind 4 that you testified about that has changed or 5 you believe is untrue or incorrect? 6 A Not to my knowledge, but I don't 7 know everything by heart. 8 Q Understood. Okay. You can set 9 Exhibit 1 aside. 10 Before we continue, I would like 11 to discuss some ground rules for today. Okay? 12 A Fine. 13 Q Do you understand that you are 14 testifying under oath today? 15 A I said I affirmed. 16 Q Do you understand that you have 17 the same obligation to tell the truth here 18 today as you would if you were testifying in 19 a courtroom before a judge and a jury? 20 A Yes. 21 Q It is important that we 22 communicate clearly today. I am going to 23 ask you some questions in connection with 24 the case. If you don't understand a 25 question, please let me know, and I will try</p> <p style="text-align: right;">Page 16</p>
<p>1 said you wanted me to look at it as long as 2 I want. So do you want me to read over a 3 hundred pages? 4 Q Mr. Mishan, do you have Exhibit 1? 5 A Yes. 6 Q Do you recognize it? 7 A Yes. 8 Q What is it? 9 A It is a transcript of a deposition. 10 Q That was on October 15, 2015, correct? 11 A You asked me that before. I said I wasn't 12 sure of the date, but over here it says that. 13 Q And you testified in this deposition in a 14 representative capacity on behalf of three entities, 15 correct? 16 A I don't recall exactly, but it 17 sounds -- I don't recall exactly. If you want me to 18 check, I can check. Ask me questions, and I 19 will answer, to the best of my ability. 20 Q You gave this testimony under 21 oath, correct? 22 A I affirmed. 23 Q Everything you said in this 24 deposition was true and correct, right? 25 A To the best of my knowledge and</p> <p style="text-align: right;">Page 15</p>	<p>1 to clarify it for you. Okay? 2 A Understood. 3 Q You understand you are being 4 represented here today by your lawyer who is 5 sitting next to you? 6 A Yes. 7 Q Do you understand there is a 8 court reporter here today, and the court 9 reporter is transcribing everything we say 10 here for the record. 11 A Yes. 12 Q Let's please try to speak at a 13 reasonable pace to help court reporter take 14 down our words. Will you help me do that? 15 A Do the best I can. 16 Q It is also difficult for the 17 court reporter if we talk over each other. 18 So I will try not to interrupt you while you 19 are answering my questions, and I will ask 20 you that you try to let me finish my 21 questions before you begin to answer. Okay? 22 A Fine. 23 Q Also, for the benefit of the 24 court reporter, please try to answer all of 25 my questions verbally. Okay?</p> <p style="text-align: right;">Page 17</p>

1 A Okay.
2 Q That being, it is difficult for
3 the court reporter to transcribe bodily
4 gestures such as nodding your head or saying
5 uh-huh, so please try to always use words
6 when you are answering. Okay?
7 A Okay.
8 Q Is there any reason that you
9 cannot testify truthfully and accurately today?
10 A Is there any reason that I can't?
11 Q Correct.
12 A Why are you assuming that I
13 can't?
14 Q I just asked if there is any
15 reason that you, to your knowledge that you
16 cannot testify truthfully and accurately today?
17 A I can only testify from what I
18 remember.
19 Q Are you taking any prescription
20 medications or any drugs that may affect
21 your ability to think, remember or testify
22 truthfully today?
23 A No.
24 Q What did you do to prepare for
25 today's deposition?

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1 A Spoke to my attorney.
2 Q When?
3 A Yesterday.
4 Q Any other occasions when you
5 spoke to your attorney to prepare for the deposition?
6 A I believe so.
7 Q When was that?
8 A I am trying to remember. Today
9 is Wednesday? Spoke yesterday, spoke also Monday.
10 Q Any other occasions?
11 A Possibly more, but I don't recall exact.
12 Q Did you meet yesterday by phone
13 or in person?
14 A Person.
15 Q Who was present?
16 A Me and Scott.
17 Q Anybody else?
18 A No.
19 Q Where was the meeting?
20 A In my office.
21 Q Were you shown any documents?
22 A Shown any documents? No.
23 Q Did you review any document in
24 preparation for today's deposition?
25 A Yes.

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1 Q Which documents did you review?
2 A I don't know exact terminologies,
3 but in regards to the case, what you call
4 it, the complaint, I guess, and what we
5 submitted like the third-party testing that
6 we had, several third-party testings that we
7 had that proved that the product works.
8 Q By the product, you are talking
9 about Bell + Howell ultrasonic pest repellers and
10 Bell + Howell solar animal repellers?
11 A Yes.
12 Q Did you review any other
13 documents in preparation for today's deposition?
14 A As I mentioned, whatever we
15 submitted.
16 Q When you spoke with your attorney
17 on Monday, was that by phone or in person?
18 A Phone.
19 Q How long was that meeting?
20 A I don't recall exactly.
21 Q Was it more or less than an hour?
22 A Less than an hour.
23 Q Who was on the phone call?
24 A Me and Scott.
25 Q Was anyone else on the phone call?

Page 20

1 A No.
2 Q Do you understand this case
3 involves two distinct products?
4 A One product that a customer
5 bought and the other one that nobody bought,
6 according to the complaint, yes.
7 Q So the answer is yes, you understand that
8 the case involves two distinct products?
9 A The way I answered the question,
10 that is the way I am answering it.
11 Q One of the products is the Bell +
12 Howell ultrasonic pest repellent, correct?
13 A Pictured in the complaint, a pest
14 repellent with an outlet and a light pictured in the
15 complaint, yes.
16 Q Does Bell + Howell make other
17 types of ultrasonic pest repellent, other than the
18 type you were referring to now?
19 A Yes.
20 Q How many different types of pest
21 repellers does Bell + Howell make?
22 A I don't know.
23 Q Does it make more than two?
24 A I think more than two.
25 Q How many can you think of?

Page 21

1 A Maybe around 7-ish, ish.
 2 Q Sure. So far you listed a model
 3 with a light and an extra outlet, correct?
 4 A That is what was pictured in the
 5 complaint.
 6 Q Can you tell me another model
 7 that you can think of?
 8 A But this is what is at issue in
 9 the complaint, so what is the question?
 10 Q I asked you if you can tell me
 11 another model of the pest repellents that you
 12 can think of?
 13 A I don't know the style numbers.
 14 Q What do you mean by style numbers?
 15 A Item number.
 16 Q I am sorry, what?
 17 A Item number, item number.
 18 Q You can think of today seven
 19 different item numbers?
 20 A Not item numbers. You mentioned
 21 different types of pest repellents.
 22 Q Can you give me an example of
 23 another type of test repeller other than the
 24 light and extra outlet model?
 25 A What does it have to do with the case?

Page 22

1 Q Please read my question back?
 2 (Thereupon, the record was read
 3 back by the reporter as recorded
 4 above.)
 5 THE WITNESS: My answer was?
 6 (Thereupon, the record was read
 7 back by the reporter as recorded
 8 above.)
 9 THE WITNESS: All right.
 10 BY MR. KOPEL:
 11 Q I am here to ask you questions
 12 today, and unless your attorney gives you an
 13 instruction not to answer, you have to answer my
 14 questions. So can you please answer my
 15 question?
 16 A To the best of my ability.
 17 Q Can you please read back the
 18 question that I asked originally?
 19 (Thereupon, the record was read
 20 back by the reporter as recorded
 21 above.)
 22 THE WITNESS: So the unit
 23 pictured in the complaint, as I
 24 mentioned, is with an outlet and a
 25 light. I know that I have another one

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1 without an extra feature of an outlet
 2 and a light. You can have another one
 3 just with an outlet.
 4 BY MR. KOPEL:
 5 Q So far --
 6 A I am thinking.
 7 Q Sorry.
 8 A You can have another one with a
 9 different type of light. Say this is an
 10 on-off switch; you have another one with
 11 just the dawn-dusk, turning on dawn-dusk.
 12 Oh, you could have one with just
 13 the dawn-dusk alone without the extra outlet as well.
 14 These are examples. I don't know what count
 15 we are up to, but it is approximately what I
 16 remember.
 17 Q So far you have listed five
 18 different types of models. I know you mentioned --
 19 A Then I think you have say a
 20 smaller one, and that smaller one which
 21 would have an outlet, and a small one that
 22 would have a light, so I think you are
 23 around, as I said, 7-ish.
 24 Q You believe you have covered all
 25 of them, or do you think that there are

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1 other varieties that you probably have not --
 2 A To the best of my knowledge.
 3 Q And the mini models, to your
 4 knowledge, only come in two varieties: With
 5 the outlet and with the light, correct?
 6 There is no other varieties of smaller?
 7 A Outlet with the light, I am not
 8 sure if we did with an outlet and a light
 9 together, I am not sure.
 10 Q Now all varieties of the
 11 ultrasonic pest repellents are distributed by
 12 Van Hauser, correct?
 13 A Well, the pest repellents go under
 14 Van Hauser, but Van Hauser can sell it or E.
 15 Mishan & Sons can sell it.
 16 Q Emson sells these pest repellents
 17 under the Van Hauser license to do so, correct?
 18 A Trying to get the exact terminology.
 19 Please repeat it. Sorry.
 20 (Thereupon, the record was read
 21 back by the reporter as recorded
 22 above.)
 23 THE WITNESS: Well, Van Hauser,
 24 pest repellents under the Van Hauser
 25 company, Van Hauser permits Emson to

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<p>1 sell the product to retailers, et cetera. 2 BY MR. KOPEL: 3 Q Is there a written agreement 4 between Van Hauser and Emson allowing Emson 5 to sell the products to companies under Van 6 Hauser's license? 7 A Emson to Van Hauser? It could 8 be, but I am not sure. 9 Q Does Emson -- 10 A I am sorry, Van Hauser permitting 11 Emson, I am not sure if there is a written agreement. 12 Q Does Emson pay money to Van 13 Hauser for the privilege of using its license to sell 14 their repellers to companies? 15 A Well, BHH has the Bell + Howell 16 license, so I am confused by the question. 17 I am sorry. 18 Q Sure. I think that you testified 19 earlier -- correct me if I am wrong -- that 20 Van Hauser permits Emson to sell the 21 repellers using its license? 22 A Using the Bell + Howell license, 23 correct. So what is the question now? 24 Q Okay, I want to clarify your 25 testimony so let's take a step back because</p> <p style="text-align: right;">Page 26</p>	<p>1 repellers made through two companies instead 2 of one? 3 A I just explained it. 4 Q Well, I guess I didn't hear the 5 answer clearly. 6 A Okay. Because Emson might have a 7 vendor number with a retailer that Van 8 Hauser may not have and the retailer may not 9 want to set up a new vendor number, so we 10 can sell the retailer, we would sell it 11 under the Emson brand. Sorry, Emson 12 company. 13 Q So the decision whether to sell 14 repellers to retailers through Emson or 15 through Van Hauser is also dependent on 16 which of the two companies has a pre-existing 17 relationship with the retailer, correct? 18 A Many times, yes. 19 Q Are there any other 20 considerations that go into this decision? 21 A Not that I know of. 22 Q If there is a retailer that 23 wishes to purchase the repellers that 24 doesn't have a pre-existing relationship 25 with either Van Hauser or with Emson, which</p> <p style="text-align: right;">Page 28</p>
<p>1 maybe we are misunderstanding each other. 2 A Okay. 3 Q Does Emson require permission 4 from Van Hauser to use the Bell + Howell 5 license? Or does Emson require permission 6 from BHH to use the Bell + Howell license? 7 A Emson gets permission from BHH to 8 use the Bell + Howell license. 9 Q Does Emson operate under any 10 licenses belonging to Van Hauser? 11 A Well, the license belongs to BHH. 12 I can explain. 13 BHH has a license for Bell + 14 Howell. They permit Van Hauser to use the 15 Bell + Howell brand for pest repellants. 16 BHH permits also Emson to use a Bell + 17 Howell brand on pest repellers or whatnot, 18 but the pest repellers are a Van Hauser, you 19 know, product. 20 The reason that we do it any way, 21 Emson will have vendor numbers with 22 retailers that Van Hauser might not have and 23 just more of a -- so they can make the sale 24 accordingly. 25 Q Why are the sales of the pest</p> <p style="text-align: right;">Page 27</p>	<p>1 company sells the repellers? 2 A If we can, if we are starting 3 from scratch and they don't have either 4 company, neither company has the vendor 5 number, we would try to do it with Van 6 Hauser. But many times Emson would have a 7 pre-existing vendor agreement, vendor 8 number, sorry, and they in turn would sell 9 the retailer. 10 Q Understood, thank you for clarifying. 11 A My pleasure. 12 Q Sale of the ultrasonic pest repellers 13 began in the year 2011, is that correct? 14 A I believe so, yes. 15 Q All the different varieties of 16 the pest repellers you mentioned earlier, 17 have those all been for sale since 2011? 18 A Have all been for sale? 19 Q Have all varieties of the pest 20 repellers that you mentioned earlier been 21 for sale since the year 2011? 22 A I am not sure. Maybe some could 23 be after. I don't recall. 24 Q But the earliest sales of the 25 pest repellers occurred in 2011, correct?</p> <p style="text-align: right;">Page 29</p>

1 A Well, the sales of the one that
2 was pictured from my recollection was 2011.
3 Q Were there sales of any other
4 varieties prior to 2011?
5 A Could be. I am just knowing what
6 was pictured in the complaint in my mind.
7 Q Do you know sitting here today
8 whether there was sales of any variety of
9 pest repellers prior to 2011?
10 A I don't know. As I mentioned
11 just focusing on what was pictured, that is
12 what I recall for now.
13 Q Okay, I understand what you are
14 focusing on. I just want to know if sitting
15 here today you have a recollection
16 independent of what was pictured?
17 A I don't recall right now. Could
18 be yes, could be no.
19 Q The different varieties of the
20 ultrasonic pest repellers come in packs with
21 different quantities of repellers, correct?
22 A I believe so.
23 Q Do some come as individual packs?
24 A I am not sure if they came as
25 one. I don't recall.

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1 Q What other quantity numbers are
2 the different varieties of pest repellers sold in?
3 A I just know what is pictured. I
4 will do the best I can to remember. You are
5 asking about what?
6 Q So, Bell + Howell has some three
7 packs, for instance, of pest repellers that
8 they sell, right?
9 A Well, Van Hauser has. Bell +
10 Howell is the brand.
11 Q So the Bell + Howell brand
12 includes three packs of the pest repellers?
13 A Van Hauser would sell like
14 pictured in the complaint a three-pack.
15 Q Are there packages that come in
16 any other quantity, other than three?
17 A Well, the product pictured in the
18 complaint, I believe we also made a five-pack too.
19 Q What about the product without an
20 outlet and a light? What quantities are those
21 available in?
22 A I am not sure because I am just
23 remembering more of what is in the complaint.
24 Q So you have no recollection of
25 any quantity number that the models without

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1 an outlet and a light are offered in?
2 A I said I am not sure. I said it
3 could be three-pack, could be four-pack. I
4 just know what is pictured in the complaint.
5 Q How about just with the outlet?
6 Do you have any knowledge of what quantities
7 those models are offered in?
8 A Same type of answer. I am just
9 remembering right now what is pictured in the
10 complaint. As I said it could be three-pack, it
11 could be four-pack.
12 Q Is a separate SKU number assigned
13 to each different type of packaging of the
14 ultrasonic pest repellers?
15 A Different type of packages? You
16 mean by packaging, if it had a, that three,
17 that package of three, which I mentioned, we
18 also have I believe the package of five, the
19 package of five could be, if I recall, a
20 mail order box.
21 Q So does the five-pack have a
22 different SKU number from the three-pack?
23 A I don't remember. It could have
24 the same number; maybe there is five.
25 Q Is there a different SKU pack for

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1 the different varieties of the pest repellers sold?
2 A Again, I concentrated more what
3 is pictured in the complaint, not, so I just
4 know about that SKU right now.
5 Q But you are a vice president for
6 Van Hauser, correct?
7 A That is correct.
8 Q Do you know if there is a different SKU
9 number for each of the different varieties?
10 A Oh, a SKU meaning, you mean style
11 number, item number?
12 Q Correct.
13 A There would usually be, yes,
14 different style numbers, yes.
15 Q So, in accounting records, each
16 variety is accounted for independently, correct?
17 MR. WING: Object to form.
18 THE WITNESS: Are you saying it
19 is accounted for independently?
20 BY MR. KOPEL:
21 Q Yes.
22 A Or are you asking me if there is
23 different SKU numbers? Is that what you
24 mean by accounted for independently? It has
25 a different style number so I don't know

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<p>1 what your question is.</p> <p>2 Q With regards to all varieties of</p> <p>3 the ultrasonic pest repellers, will you</p> <p>4 agree that the main function of the products</p> <p>5 is to repel pests?</p> <p>6 MR. WING: Object to form.</p> <p>7 THE WITNESS: It is one of the</p> <p>8 functions.</p> <p>9 BY MR. KOPEL:</p> <p>10 Q Would you agree that the primary</p> <p>11 function of each of the products is to repel pests?</p> <p>12 MR. WING: Same objections.</p> <p>13 THE WITNESS: Well, if it has a</p> <p>14 light on there, the customer might</p> <p>15 want -- they would like the light, but</p> <p>16 pest repelling function is a function.</p> <p>17 BY MR. KOPEL:</p> <p>18 Q Would you agree that the light</p> <p>19 function on the pest repeller is a secondary</p> <p>20 function to the pest repelling function?</p> <p>21 A I can't account for what the</p> <p>22 customer would perceive, but it is one of</p> <p>23 the functions of the product.</p> <p>24 Q Would you agree that in general,</p> <p>25 a pest repeller with a light would cost more</p> <p style="text-align: right;">Page 34</p>	<p>1 reporter to mark as Exhibit 2 document</p> <p>2 bearing Bates number BHH, LLC 000292.</p> <p>3 (Thereupon, the document</p> <p>4 bearing Bates number BHH LLC 000292</p> <p>5 was marked Deposition Exhibit 2 for</p> <p>6 Identification, as of this date.)</p> <p>7 BY MR. KOPEL:</p> <p>8 Q Mr. Mishan, do you have Exhibit 2?</p> <p>9 A Yes.</p> <p>10 Q I will just note, by the way, that that</p> <p>11 page is double sided, so the exhibit is two pages.</p> <p>12 A Okay.</p> <p>13 Q I will note that for the record.</p> <p>14 A Okay.</p> <p>15 Q The exhibit goes from number 292</p> <p>16 to 293. Have you seen Exhibit 2 before?</p> <p>17 A Yes.</p> <p>18 Q What is it?</p> <p>19 A Package.</p> <p>20 Q What kind of package?</p> <p>21 A Like a retail package.</p> <p>22 Q What kind of retail package?</p> <p>23 A This looks like a copy of a card</p> <p>24 that's a blister pack for a three-piece pest</p> <p>25 repeller with night light with switch and</p> <p style="text-align: right;">Page 36</p>
<p>1 than simply buying the light by itself?</p> <p>2 MR. WING: Object to form.</p> <p>3 THE WITNESS: I don't know what</p> <p>4 other people would charge for their</p> <p>5 product to know that.</p> <p>6 BY MR. KOPEL:</p> <p>7 Q Do you believe there are consumers</p> <p>8 who purchased pest repellers solely for the</p> <p>9 light function?</p> <p>10 A I don't know what the consumers</p> <p>11 buy the product for. They could buy it, one</p> <p>12 person may like the light, another person</p> <p>13 likes the design, another person might like</p> <p>14 a pest repeller.</p> <p>15 Q So you think some people buy it</p> <p>16 just because they like the design?</p> <p>17 A I said I don't know.</p> <p>18 Q You think that is possible?</p> <p>19 A I said I don't know.</p> <p>20 Q Well, you listed it as a possibility,</p> <p>21 right?</p> <p>22 A I said the consumer could buy it</p> <p>23 for any reason, as you said, pest repeller,</p> <p>24 the lights; I said maybe design.</p> <p>25 MR. KOPEL: I ask the court</p> <p style="text-align: right;">Page 35</p>	<p>1 extra outlet with safety cover.</p> <p>2 Q Do you know who made this photocopy?</p> <p>3 A Do I know who made this photocopy? No.</p> <p>4 Q Do you know why it was made?</p> <p>5 A You were showing me an exhibit.</p> <p>6 Do I know why it is made? Because you are a</p> <p>7 lawyer and you gave me some papers to look at.</p> <p>8 Q Do you understand that your</p> <p>9 attorney produced this document in the</p> <p>10 course of discovery in this case?</p> <p>11 A I don't know if he got it or you</p> <p>12 got it. I don't know how it started, but</p> <p>13 this is our package.</p> <p>14 Q Have you seen this specific</p> <p>15 document before?</p> <p>16 A Yes.</p> <p>17 Q But you don't know where it came</p> <p>18 from, right?</p> <p>19 A I don't understand your question.</p> <p>20 Q The question is simply that your</p> <p>21 lawyer produced a document containing a</p> <p>22 photocopy of a package in the course of</p> <p>23 discovery in this case?</p> <p>24 A Okay.</p> <p>25 Q I am asking who made that photocopy?</p> <p style="text-align: right;">Page 37</p>

1 A I don't know. Maybe Scott did.
 2 Maybe the one woman who bought it. I don't
 3 know, I don't know; that I don't know.
 4 Q When was this package in use in
 5 the retail market?
 6 A You asked me before when we
 7 started selling them. I believe it was around 2011.
 8 Q So this was the first package
 9 design utilized when you began selling these
 10 models in 2011?
 11 A To the best of my knowledge, this
 12 model.
 13 Q Was this same packaging design
 14 used for this model of Bell + Howell ultrasonic pest
 15 repellers from 2011 to present?
 16 A I believe we started with black,
 17 a black package meaning not black but just
 18 black color and then we also have blue, blue color.
 19 Q To your knowledge, did anything
 20 change other than the color of the background in the
 21 packaging?
 22 A Not to my recollection.
 23 Q Do you see on the first page,
 24 page 292, there are pictures of ants,
 25 mice/rats, spiders and roaches?

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1 A I see illustrations of them.
 2 Q What is that meant to signify?
 3 A Well, you have each one of them
 4 and it has a little slash through it to signify that
 5 it repels.
 6 Q That it repels each of those
 7 animals, right?
 8 A I don't know if you consider an
 9 ant, a spider an animal. Mice and a rat
 10 could be an animal. Roach, I don't consider
 11 that an animal as well.
 12 Q These illustrations signify that
 13 these devices repel, these devices are
 14 designed to repel each of those pests, correct?
 15 A Yes, like stated in to our third-party
 16 testing, actually two third-party testings.
 17 Q I am sorry, third-party what?
 18 A Third-party independent lab testings.
 19 Q Okay, thank you.
 20 Did the illustrations of these
 21 four animals to your knowledge appear on the
 22 packaging for all varieties of the Bell +
 23 Howell ultrasonic pest repellers sold?
 24 A You keep on saying animals.
 25 MR. WING: Object to form.

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1 THE WITNESS: Mice and rat
 2 maybe is an animal. And the spiders
 3 and roaches, I don't think those are
 4 animals. So please repeat the
 5 question.
 6 BY MR. KOPEL:
 7 Q Sure. Do the illustrations of
 8 these four pests appear uniformly on the
 9 packaging for all varieties of Bell + Howell
 10 ultrasonic pest repellers sold?
 11 A Well, as I mentioned, like this
 12 unit in a five-pack would be in a mail order
 13 box and it wouldn't have this illustration;
 14 it would have an instruction sheet.
 15 Q What do you mean by a mail order
 16 box?
 17 A Brown box.
 18 Q Does that brown box contain
 19 smaller individual packages of pest repellers?
 20 A It could contain like the pest
 21 repeller pictured here, it could contain as
 22 I mentioned let's say five of them with an
 23 instruction sheet in a brown mail order box.
 24 Could be white mail order box.
 25 Q Are the repellers, do the

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1 repellers sit, are they packaged loose in
 2 the box or is there something holding them
 3 in place?
 4 A Could be each in a poly bag or a
 5 bubble bag.
 6 Q Where are those mail order boxes
 7 available for sale?
 8 MR. WING: Object to form.
 9 THE WITNESS: Let's say if we
 10 would sell it to a catalog, we would
 11 ship the merchandise to the catalog
 12 and the catalog would in turn sell it
 13 to consumers.
 14 BY MR. KOPEL:
 15 Q To your knowledge, are the
 16 five-pack mail order boxes available on the
 17 shelves of, you know, in-person retailers?
 18 A Not to my knowledge.
 19 Q Excepting for the five-pack mail
 20 order boxes we were just talking about, to
 21 your knowledge, do the illustrations of
 22 these four pests depicted in Exhibit 2
 23 appear uniformly on all packaging for all
 24 varieties of the Bell + Howell ultrasonic
 25 pest repellers?

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11 (Pages 38 - 41)

<p>1 MR. WING: Object to form. 2 THE WITNESS: As I mentioned, I 3 am really more recalling what was 4 pictured in the complaint. Could be. 5 BY MR. KOPEL: 6 Q Sitting here today, can you think 7 of any variety of Bell + Howell ultrasonic 8 pest repellers excepting for the mail order 9 package that we just spoke about that does 10 not contain these illustrations on the package? 11 A I am not sure. 12 Q The question is: Can you think 13 of any? 14 A I said I am not sure. 15 Q I don't believe that was responsive, so I 16 am just going clarify. 17 A Okay. 18 Q If you can't think of any, then the answer 19 is no, you can't think of any. If you can think of 20 any, then the answer is yes. There is no 21 way to not be sure. 22 A Don't put words in your mouth. 23 Q I am not trying to. I am 24 entitled to an answer to the question. 25 A Sounds like you are, but I will</p> <p style="text-align: right;">Page 42</p>	<p>1 A Oh, it is on the back also. 2 "Ultrasonic signals will lose intensity as 3 it travels. It is also absorbed by soft 4 objects such as carpeting and is reflected 5 by hard surfaces such as furniture. 6 Ultrasonic signals cannot reach nesting or 7 feeding places behind walls, under floors, 8 or within cracks." 9 There may be more -- also 10 instructions in the information and instruction 11 sheet as well on how to use the product. 12 Q Understood. And I am, and we 13 will get to that in a moment. But I am 14 asking if this specific statement is meant 15 to function as an instruction? 16 A It is a bullet point that tells a 17 person to plug it in -- to have to plug it 18 in, they have to make sure they have 19 voltage, they have to make sure to follow 20 the instructions, which is mentioned on the 21 back of the package as well. 22 Q Sitting here today, can you think 23 of any varieties of the Bell + Howell 24 ultrasonic pest repellers excepting for 25 perhaps the mail order box that we discussed</p> <p style="text-align: right;">Page 44</p>
<p>1 answer to the best of my ability. 2 Q Sure. I am asking if sitting 3 here today you can list to me or think of 4 any varieties of Bell + Howell ultrasonic 5 pest repellers with the exception of the 6 five-pack that we just discussed that do not 7 contain the illustrations of these four pests? 8 A The retail package I would say 9 most probably would have the illustrations there. 10 Q Do you see below the illustrations appear 11 the words "plug it in...drive pests out"? 12 A Yes. 13 Q Do you understand that to mean 14 that the instructions for the devices are 15 simply to plug it in and that it will function to 16 drive the pests out? 17 A Well, there is an instruction 18 sheet inside as well that tells the person 19 to plug it in. And also not to have furniture 20 blocking the unit so the ultrasonic sound 21 can travel accordingly. 22 So like any package, you have, 23 almost every package you have instructions. 24 Q Is this statement here meant to 25 be an instruction?</p> <p style="text-align: right;">Page 43</p>	<p>1 earlier that does not contain this statement 2 "plug it in... drive pests out"? 3 A Same type of answer regarding the 4 illustrations. More on this packaging, but 5 the retail packaging I believe can have that 6 statement. I am not sure if they all do, 7 but it could. 8 Q Can you list to me any that do 9 not, sitting here today? 10 A I said I am not sure exactly, so 11 I don't know what every package, if they all 12 have that line. Maybe there wasn't room on 13 the package, I don't know, but it could. 14 Q See below there it says, "fast 15 and effective ultrasonic sound waves to help 16 repel unwanted pests"? 17 A It is cut off, but it seems to 18 say that, yes. 19 Q Same question: Can you think of 20 any variety of the Bell + Howell ultrasonic 21 pest repellers for sale except perhaps the 22 mail order box that do not contain this statement? 23 A The same answer I said before. 24 Is that good? 25 Q That is fine, but I would just</p> <p style="text-align: right;">Page 45</p>

<p>1 ask you to explain the answer for the record. 2 A I said to the best of my 3 recollection that I believe it has there -- 4 I am not sure, unless there wasn't room on 5 the package, but I believe it is there the 6 same way I mentioned on the illustration to 7 "plug it in...drive pests out" and the "fast 8 and effective ultrasonic sound waves to help 9 repel unwanted pests." 10 If you want to go through each 11 one, you can ask away. 12 Q Please turn to the next page 13 bearing Bates number BHH, LLC.000293. 14 A Okay. 15 Q I would like to please focus on 16 the language which you read a bit earlier. 17 A Okay. 18 Q Where it says: "Note, ultrasonic 19 signals will lose intensity as it travels. 20 It is also absorbed by soft objects such as 21 carpeting and is reflected by hard surfaces 22 such as furniture. Ultrasonic signals 23 cannot reach nesting or feeding places 24 behind walls, under floors or within cracks. 25 Multiple units may be necessary for larger</p> <p style="text-align: right;">Page 46</p>	<p>1 A Yes. 2 Q Is the same true for all of the 3 Bell + Howell solar animal repellers for sale? 4 A In other words, did we purchase 5 it through Intellitec? Is that the question? 6 Q Yes. 7 A Yes, to the best of my 8 recollection, yes. 9 Q Is there a written agreement 10 between Intellitec and either Emson, Van 11 Hauser, or BHH governing the purchase of the 12 pest repellers? 13 A What do you mean by written 14 agreement? 15 Q I mean a contract governing the 16 sale. Perhaps it sets forth quantities. 17 Perhaps it sets forth price. Perhaps it 18 sets forth other terms of the purchase. 19 A We place a purchase order. 20 Q How did the three companies -- 21 when I say the three companies, just for shorthand 22 to not take up time, will you understand that I mean 23 Emson, Van Hauser and BHH? 24 A Yes. 25 Q How did the three companies come</p> <p style="text-align: right;">Page 48</p>
<p>1 rooms." 2 The language goes on, and we will 3 get to that in a moment. But I just wanted 4 to ask: Who wrote this language? 5 A From what I recall, the agent 6 that we work with. 7 Q Who is that? 8 A Intellitec. 9 Q What do you mean by: "Agent that 10 we work with"? What do you work with Intellitec on? 11 A Intel is an agent that we buy 12 pest repellers from. 13 Q Do all the pest repellers sold 14 under the Bell + Howell name come from 15 Intellitec? 16 A I believe so. 17 Q Forgive me for coming back to 18 this just because I seem to have forgotten 19 your last answer. 20 Did you say that you are not sure 21 if all of the Bell + Howell ultrasonic pest repellers 22 available for sale come from Intellitec? 23 A I said I believe so. 24 Q You believe so, okay, good. 25 Thank you.</p> <p style="text-align: right;">Page 47</p>	<p>1 to work with Intellitec on the sale of the pest 2 repellers? 3 A Van Hauser would purchase the 4 product from Intellitec. 5 Q When did this relationship start 6 between the three companies and Intellitec? 7 A Well, as I said, Van Hauser buys 8 pest repellers from Intellitec, so it is really Van 9 Hauser and Intellitec. 10 Q Does, so Emson does not purchase 11 any of the repellers from Intellitec, correct? 12 A Van Hauser buys pest repellers 13 from Intellitec. Emson, as I mentioned, 14 pest repellers are a Van Hauser product. I 15 went through each. Hopefully I clarified. 16 Q After Van Hauser buys the 17 repellers from Intellitec, does Emson pay 18 Van Hauser for the repellers before selling 19 them to retailers? 20 A Well, Van Hauser pays Intellitec 21 to purchase the product, so it is a Van 22 Hauser product. 23 Q Then the Van Hauser product is 24 then sold by either Van Hauser or by Emson, 25 correct?</p> <p style="text-align: right;">Page 49</p>

<p>1 A As I mentioned before, regarding 2 vendor numbers, et cetera. 3 Q With regards to the units that 4 are sold by Emson, does Emson pay Van Hauser 5 for those unit before Emson sells the units 6 to retailers? 7 A Does Emson pay Van Hauser before 8 they sell it? No. 9 Q Does Emson pay Van Hauser for the 10 units at any time? 11 A After Emson would get paid from 12 the retailer -- I am not sure when, but 13 Emson then would then owe -- if Emson gets a 14 check from the retailer, then Emson would 15 have to pay Van Hauser. 16 Q Does Emson pay Van Hauser the 17 entire amount of the check received by the 18 retailers? Or does it -- let's stop there. 19 Does Emson pay the entire money 20 received from the retailers to Van Hauser? 21 A Emson would pay Van Hauser. If 22 the retailer takes deductions or whatnot, that I 23 don't, you know, depends on the situation 24 but Emson pays Van Hauser. 25 Q Well, to clarify what I am</p> <p style="text-align: right;">Page 50</p>	<p>1 repellers? 2 A Regarding the pest repeller, as I 3 mentioned, this product here was from what I 4 recall from 2011. But there was a relationship 5 with Van Hauser and Intellitec, Emson and 6 Intellitec before 2011, to make clear. 7 Q The solar animal repellers sold 8 under the Bell + Howell name began selling 9 retail sales in the year 2010, is that correct? 10 A I don't know if it sold in retail 11 sales in 2010. Maybe it started in mail 12 order catalogs around that time. I don't 13 know the exact date. 14 Q But it was approximately 2010, 15 correct? 16 A I am not sure. I am not sure of 17 the exact date. I don't want to say something 18 incorrect. 19 Q Sales of the animal repellers 20 under the Bell + Howell name began prior to 21 sales of the pest repellers under the Bell + 22 Howell name, correct? 23 A I am not sure because, again, I 24 know this pest repeller. You asked me on 25 other pest repellers, were they before. I</p> <p style="text-align: right;">Page 52</p>
<p>1 asking, is Emson paying Van Hauser for the 2 units at cost, or is Emson paying Van Hauser 3 for the units at retail or at wholesale prices? 4 A Emson sells to the retailer, gets 5 paid from the retailer, and then Emson pays 6 that money to Van Hauser. 7 Q When did the relationship between 8 Intellitec and Van Hauser begin? 9 A In pest repellers? 10 Q Let's start in general. 11 A I am not sure when, but say before 2011, 12 2010. 13 A I don't know exactly when. 14 Q But it was, it was prior to them, 15 the two entities forming a relationship with 16 regards to the pest repellers, correct? 17 A Well, Intellitec sells a variety 18 of product to Emson. 19 Q You just said Intellitec sells a 20 variety of products Emson. And I just want 21 to clarify. 22 A To Emson, Van Hauser. 23 Q Intellitec was selling different 24 products to either Emson or Van Hauser 25 before 2011 when it began selling the pest</p> <p style="text-align: right;">Page 51</p>	<p>1 believe so, so I am not sure if the previous 2 pest repellers were before the animal 3 repeller or the animal repeller was before 4 the pest repeller. 5 Q So let's go back to that topic 6 because I am a little bit confused. 7 When do you believe the first 8 sales of any of the pest repellers began? 9 A I really don't know. I don't 10 remember. 11 Q Do you think that it was 12 certainly prior to 2011? 13 A I don't know for certain, but I 14 believe so. 15 Q Do you think it was prior to 2010? 16 A I don't know because my mind was 17 more focusing on the product that was in the 18 complaint. 19 Q In preparing for today, you 20 didn't take any time to acclimate yourself 21 on the details of the other varieties of 22 Bell + Howell pest repellers, correct? 23 A I acclimated myself on what was 24 in the complaint. It was enough to go through. 25 Q What I am asking is: You did not</p> <p style="text-align: right;">Page 53</p>

1 take the time to acclimate yourself on other
 2 varieties of the Bell + Howell pest
 3 repellers other than the one pictured in
 4 Exhibit 2, correct?
 5 A That was more what I, that is
 6 what I reviewed.
 7 Q That is solely, that one is
 8 solely what you reviewed, correct? I am
 9 just trying to get a straight answer for
 10 purposes of the record.
 11 A I am trying to give you a
 12 straight answer too.
 13 Q Okay, thank you.
 14 A No problem.
 15 I reviewed, like you asked
 16 before, what the issue was in the complaint,
 17 reviewed the papers, that is what I was
 18 focusing on, so I am answering to the best
 19 of my ability.
 20 Q I just want to clarify. I
 21 understand that you reviewed the details
 22 surrounding the Bell + Howell pest repellers
 23 that are pictured in the complaint, and I
 24 just want to clarify that you did not review
 25 the details surrounding other varieties of

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1 Bell + Howell pest repellers?
 2 A I reviewed -- like I mentioned, I
 3 reviewed this. I didn't start reviewing for
 4 lack of a better term other pest repellers
 5 that you are mentioning.
 6 Q I think we have been going for an
 7 hour, maybe a little more, so let's take a quick
 8 break.
 9 (Brief break.)
 10 BY MR. KOPEL:
 11 Q Mr. Emson, before the break we
 12 were discussing the business relationship
 13 between Van Hauser and Intellitec. Do you
 14 recall that?
 15 A Yes.
 16 Q Did Intellitec originally
 17 approach Van Hauser regarding the pest
 18 repellers, or was it the other way around?
 19 A From what I recall, Intellitec
 20 approached Van Hauser.
 21 Q Do you recall who specifically at
 22 Van Hauser was originally approached by
 23 Intellitec?
 24 A I believe Steven, Steven Mishan.
 25 Q Do you recall if e-mails were

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1 utilized in the original rounds of communications
 2 regarding the pest repellers?
 3 A I wouldn't know because you asked
 4 me who is involved. I said Intellitec and I
 5 believe Steven Mishan.
 6 Q Okay. So to clarify, did you
 7 personally have any involvement in the launch, the
 8 original launch of the pest repellers product?
 9 A What do you mean by launch?
 10 Q Well, you testified that
 11 Intellitec originally approached Van Hauser
 12 regarding the pest repellers, correct?
 13 A To the best of my knowledge, yes.
 14 Q At that point Van Hauser investigated the
 15 product and considered whether or not they
 16 wanted to sell the product, correct?
 17 MR. WING: Object to form.
 18 THE WITNESS: I didn't say Van
 19 Hauser investigated the product. You
 20 asked before who approached who, did
 21 Intellitec approach Van Hauser or did
 22 Van Hauser approach Intellitec.
 23 I said from my understanding
 24 Intellitec approached Van Hauser. You
 25 asked who that person was. I said I

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1 believe it was Steven Mishan.
 2 BY MR. KOPEL:
 3 Q Did you have any involvement in
 4 these initial discussions regarding the pest
 5 repellers with Intellitec?
 6 A Not that I recall.
 7 Q So, I understand that you have
 8 just said that you don't recall having involvement in
 9 this, in the original discussions. However, I am
 10 still going to ask you a series of questions
 11 regarding the original relationship because
 12 you understand you are testifying here today
 13 as a representative of a company, not solely as
 14 yourself, correct?
 15 A Yes.
 16 Q Do you know if documents were
 17 exchanged between Van Hauser and Intellitec
 18 in that original phase when Intellitec approached Van
 19 Hauser regarding the pest repellers?
 20 A I don't know if Intellitec spoke
 21 to Steven on the phone. I don't know if he
 22 sent them an e-mail. I don't know if they
 23 met face-to-face. I don't know.
 24 Q Do you know if Intellitec sent
 25 any sorts of specifications regarding the

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<p>1 products at that time?</p> <p>2 A I wasn't involved in that initial, in that</p> <p>3 communication which you mentioned, how did</p> <p>4 it initiate. And I said it was between Intellitec,</p> <p>5 from what I recall Steven Mishan, so I don't know</p> <p>6 those details.</p> <p>7 Q Do you have a computer at work?</p> <p>8 A Excuse me?</p> <p>9 Q Do you have a computer at work?</p> <p>10 A Yes.</p> <p>11 Q Does -- and I will just ask a</p> <p>12 bigger question to save some time.</p> <p>13 But do all, do each of Eddie</p> <p>14 Mishan, Steve Mishan and Al Mishan, do each</p> <p>15 of them have computers at work?</p> <p>16 A Yes.</p> <p>17 Q Do you have an e-mail address at work?</p> <p>18 A Yes.</p> <p>19 Q Did you search your e-mails for any</p> <p>20 relevant communications in connection with this case</p> <p>21 to produce in discovery?</p> <p>22 A Did I?</p> <p>23 Q Did you look through your e-mails</p> <p>24 for relevant communications in the course of</p> <p>25 discovery in this case?</p> <p style="text-align: right;">Page 58</p>	<p>1 any testing regarding the products when</p> <p>2 they, regarding the pest repellents specifically</p> <p>3 when they initially contacted Van Hauser</p> <p>4 about the pest repellents?</p> <p>5 A I wasn't involved in the initial</p> <p>6 contact, but I know we have two independent</p> <p>7 testing, third-party testing labs, and SGS,</p> <p>8 which is over 130-years old, independent</p> <p>9 lab, and then -- and also Intertek, which is</p> <p>10 also over a hundred, I think one is</p> <p>11 130 years, another one is 138 years.</p> <p>12 Q We will get to those shortly, but</p> <p>13 do you know if Intellitec commissioned any</p> <p>14 of those tests prior to pitching the product</p> <p>15 to Van Hauser?</p> <p>16 A I don't know at what, I don't</p> <p>17 recall at what stage, you know, if it was initially</p> <p>18 thereafter, I don't know at what stages. I just</p> <p>19 know we have two independent tests.</p> <p>20 Q Do you know who at Intellitec</p> <p>21 designed the packaging illustrated in Exhibit 2?</p> <p>22 A We have a contact there. I don't</p> <p>23 know if that person did it themselves or they had</p> <p>24 someone in their office do it. That I don't know.</p> <p>25 Q Did anyone at the three companies,</p> <p style="text-align: right;">Page 60</p>
<p>1 A No.</p> <p>2 Q When you work on documents in the</p> <p>3 course of business, do you normally save</p> <p>4 documents locally on your computer or to</p> <p>5 some sort of network drive?</p> <p>6 A I don't know the exact details</p> <p>7 how the computer department sorts it.</p> <p>8 Q When you save a file, can that</p> <p>9 file then be accessed by somebody on some,</p> <p>10 by say Eddie Mishan?</p> <p>11 A I believe each one has their own</p> <p>12 independent e-mail address and each one has</p> <p>13 their own computer and e-mail address.</p> <p>14 Q Did you search your computer for</p> <p>15 documents to produce in discovery in this case?</p> <p>16 A You just asked me that question.</p> <p>17 Q I asked you the question regarding your</p> <p>18 e-mail, and now I am asking about your computer.</p> <p>19 A Okay. So your question is did I</p> <p>20 search the --</p> <p>21 Q The files stored on your computer</p> <p>22 for relevant documents to produce in discovery in</p> <p>23 this case?</p> <p>24 A Documents? Not that I remember.</p> <p>25 Q Do you know if Intellitec sent</p> <p style="text-align: right;">Page 59</p>	<p>1 Emson, BHH or Van Hauser, have any input</p> <p>2 regarding the content appearing on the</p> <p>3 packaging from Exhibit 2?</p> <p>4 A You mean -- by input you mean --</p> <p>5 please be specific.</p> <p>6 Q Sure. Did Intellitec just send</p> <p>7 along this packaging to Van Hauser, then Van</p> <p>8 Hauser said "looks good" and that is what was used?</p> <p>9 Or did Van Hauser make suggestions, comments,</p> <p>10 revisions to the packaging?</p> <p>11 A I wasn't involved in the initial,</p> <p>12 as I mentioned, so I believe Intellitec sent, maybe,</p> <p>13 could have made some changes, could be. But</p> <p>14 the packaging was made by Intellitec.</p> <p>15 Q So, you believe it is possible</p> <p>16 that some drafts were exchanged prior to the</p> <p>17 final draft, but you are unsure whether or not --</p> <p>18 A I am not sure, it could have been</p> <p>19 a phone conversation between them. I don't</p> <p>20 know, to say three-pack in the corner like</p> <p>21 that with a little star burst.</p> <p>22 Q Do you know of any drafts of this</p> <p>23 packaging or any communications regarding</p> <p>24 the drafting of this packaging, do you know</p> <p>25 if anyone searched for those in connection</p> <p style="text-align: right;">Page 61</p>

<p>1 with discovery in this case?</p> <p>2 A Did I -- please repeat the</p> <p>3 question, sorry.</p> <p>4 Q Do you know if anyone searched</p> <p>5 for drafts of this packaging or communications</p> <p>6 about drafting this packaging --</p> <p>7 A Not to my knowledge. Sorry.</p> <p>8 Q I was going to say, in connection</p> <p>9 with discovery in this case?</p> <p>10 A As I mentioned, I believe</p> <p>11 Intellitec communicated the packaging with</p> <p>12 Steven Mishan, and this is what you have</p> <p>13 before us. It looks pretty much the same</p> <p>14 package from when it began, from my</p> <p>15 understanding.</p> <p>16 Q Can you repeat my question,</p> <p>17 please.</p> <p>18 (Thereupon, the record was read</p> <p>19 back by the reporter as recorded</p> <p>20 above.)</p> <p>21 THE WITNESS: I think this is</p> <p>22 basically, as I mentioned, the same</p> <p>23 packaging. So you want to know if we</p> <p>24 searched if there is any</p> <p>25 communication. As I said I wasn't</p> <p style="text-align: right;">Page 62</p>	<p>1 effectiveness of the product. I am</p> <p>2 sure you have seen it.</p> <p>3 BY MR. KOPEL:</p> <p>4 Q But you don't know if the third-party</p> <p>5 testing was run before or after this paragraph was</p> <p>6 written, correct?</p> <p>7 A That I am not sure.</p> <p>8 Q Do you know if the third party</p> <p>9 tested whether or not the signals will lose</p> <p>10 intensity as they travel?</p> <p>11 A Third-party testing, well, I just</p> <p>12 explained that you have a certain distance,</p> <p>13 sound of course dissipates over a longer</p> <p>14 span, so that is logic. What was the other</p> <p>15 part of your question? Oh, and so that the</p> <p>16 testing report is done in regards to</p> <p>17 effectiveness to repel ants, mice, rats, spiders and</p> <p>18 roaches. Two lab reports.</p> <p>19 Q Next paragraph reads: "In some</p> <p>20 cases over time certain rodents may become</p> <p>21 accustomed to ultrasonic signals. Some may</p> <p>22 return to their feeding or nesting areas even in the</p> <p>23 presence of an ultrasonic product." Do you</p> <p>24 see that?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 64</p>
<p>1 involved in that initial and it could</p> <p>2 have been a verbal between Steven</p> <p>3 Mishan and Intellitec.</p> <p>4 BY MR. KOPEL:</p> <p>5 Q So I understand that you weren't,</p> <p>6 you weren't involved in the process. My</p> <p>7 question was only: Do you know if anyone</p> <p>8 searched for documents?</p> <p>9 A I am not sure.</p> <p>10 Q Thank you.</p> <p>11 Now, I would just read the</p> <p>12 paragraph regarding ultrasonic signals</p> <p>13 losing intensity as it travels. And I believe</p> <p>14 you testified that Intellitec drafted this</p> <p>15 paragraph, to the best of your knowledge.</p> <p>16 Do you know how Intellitec knew</p> <p>17 this information to be true?</p> <p>18 MR. WING: Object to form.</p> <p>19 THE WITNESS: Well, sounds like</p> <p>20 logic to me if you have a sound that</p> <p>21 as distance goes further, the sound is</p> <p>22 not as strong as it is in the shorter</p> <p>23 distance. That just sounds logical to</p> <p>24 me. And as I mentioned, they have the</p> <p>25 third-party testing in regards to the</p> <p style="text-align: right;">Page 63</p>	<p>1 Q Do believe this to be true?</p> <p>2 A Well, the technology from my</p> <p>3 understanding works under, that it is an</p> <p>4 ultrasonic sound, and he is basically saying</p> <p>5 that it made the rodent or insect or</p> <p>6 whatnot, might be accustomed to it after a</p> <p>7 certain period of time because it is a sound</p> <p>8 that is repelling. So it is stating that,</p> <p>9 that is what it states here.</p> <p>10 Q So you believe that paragraph to</p> <p>11 be true?</p> <p>12 A I would say that it sounds like</p> <p>13 it is true.</p> <p>14 Q Do you know how Intellitec knew</p> <p>15 this information?</p> <p>16 A I don't know how she got the,</p> <p>17 wrote the initial, you know, the sentence.</p> <p>18 But, again, that also sounds logical to me.</p> <p>19 Q Do you know if anyone at BHH, Van</p> <p>20 Hauser or Emson did any research regarding</p> <p>21 this statement that rodents may become</p> <p>22 accustomed to ultrasonic signals, some may</p> <p>23 return to their feeding or nesting areas</p> <p>24 even in the presence of an ultrasonic product?</p> <p>25 A I will say again. You have logic</p> <p style="text-align: right;">Page 65</p>

<p>1 if something that irritates you, you have a 2 sound that irritates you, after a while you 3 get used to it, you get accustomed to it. I 4 think it is a logical statement to make. 5 But as I mentioned, I have a 6 third-party testing that states that it repels, two 7 independent studies, and that is what we are 8 talking about. 9 Q I am referring solely to this 10 paragraph right here (indicating). 11 A And I am answering also 12 accordingly. I gave you the comparison to 13 if you have a certain sound, same sound, they 14 get accustomed to it after a while, the statement 15 sounds like a logical statement to me. 16 Q So you think that the statement 17 was written solely based on logic, or do you 18 think there may have been testing involved? 19 MR. WING: Object to form. 20 THE WITNESS: As I mentioned, 21 the testing was regards to effectiveness of 22 the product that it repels. The testing 23 reports in both show that they do both 24 repel. 25 BY MR. KOPEL:</p> <p style="text-align: right;">Page 66</p>	<p>1 the illustration it says distributed under license by 2 Van Hauser, LLC? 3 A Uh-huh. 4 Q Are you aware whether any 5 packages say distributed under license by 6 Emson LLC, by, excuse me, E. Mishan and 7 Sons? 8 A Not that I remember. 9 Q So, whether this product is 10 actually distributed by Van Hauser or it is 11 actually distributed by Emson, the packaging 12 still reads: "Distributed under license by 13 Van Hauser," correct? 14 A It is distributed under license -- well, 15 Bell + Howell is a registered trademark of 16 BHH. BHH allows Bell + Howell's name to be 17 used by Van Hauser. Distributed under 18 license by Van Hauser. This is what it 19 states on the package. 20 Q Even when Emson is the 21 distributor, it still says distributed under 22 license by Van Hauser, correct? 23 A Well, Van Hauser gives permission 24 for Emson to sell the product. So also if 25 we sold it at a store, the store has</p> <p style="text-align: right;">Page 68</p>
<p>1 Q Do you know whether or not 2 Intellitec reviewed testing that shows this 3 paragraph to be true? And I am not 4 referring to the third-party testing about 5 the effectiveness of the product. I am 6 referring to other testing. 7 A So, again, as I mentioned, it is 8 a logical statement to make. So I do not 9 know if they had a testing report in regards 10 to that they may be accustomed to that. Do 11 I have to have a testing report that I could 12 use it in home and offices? 13 Q Are you done with your response? 14 A Yes. 15 Q Okay. How long does it take for 16 rodents to become accustomed to these 17 ultrasonic signals? 18 A It says in some cases over time. 19 I do not know. 20 Q Were you aware that this could 21 happen in as little as a few weeks? 22 MR. WING: Object form. 23 THE WITNESS: I do not know the time. 24 BY MR. KOPEL: 25 Q Do you see at the bottom of the</p> <p style="text-align: right;">Page 67</p>	<p>1 permission to sell the product as well. 2 Q Does Van Hauser give permission 3 to Emson to sell the product, or does BHH 4 give permission to Emson to sell the product? 5 A As I membered, BHH has the Bell + 6 Howell brand. They give permission, the 7 Bell + Howell brand, to be used by Van 8 Hauser for pest repellers. 9 They also give permission to use 10 the Bell + Howell to Emson to sell other products. 11 And also BHH, as I mentioned, allows Bell + 12 Howell, Van Hauser to use the Bell + Howell 13 brand. And Van Hauser in turn allows Emson 14 to sell the pest repellers like I mentioned before. 15 Q Okay, thanks. You can set the 16 document to the side. 17 MR. KOPEL: I would like to ask 18 the court reporter to mark as 19 Exhibit 3 a document bearing Bates 20 number BHH, LLC.000296 to 297. 21 (Thereupon, the Documents 22 bearing Bates number BHH, LLC.000296 23 to 297 was marked Deposition Exhibit 3 24 for Identification, as of this date.) 25 BY MR. KOPEL:</p> <p style="text-align: right;">Page 69</p>

1 Q Mr. Emson, do you have exhibit
2 number three?
3 A Yes.
4 Q Have you seen it before?
5 A Yes.
6 Q What is it?
7 A It is, it looks like a black and
8 white copy of our blue packaging.
9 Q Do you know who made this copy?
10 A I believe it, it looks like it emulates
11 the previous copy we had before pretty much.
12 Q This packaging contained in
13 Exhibit 3 is slightly different from the packaging
14 in Exhibit 2, right?
15 A Correct.
16 Q Are they for the same product?
17 A Yes.
18 Q So this specific product had at
19 least two different designs for the packaging,
20 correct?
21 A As I mentioned before, we did a
22 black packaging and we changed it to blue
23 packaging and then, yes, there are some word
24 changes, yes.
25 Q Do you know when the design of

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1 the packaging changed?
2 A Not exactly no.
3 Q Do you know approximately?
4 A Don't know. Two years ago,
5 maybe. I am guessing.
6 Q Which packaging design is more
7 recent, Exhibit 2 or Exhibit 3?
8 A Exhibit 3.
9 Q And just quickly like Exhibit 2,
10 Exhibit 3 reads plug it in, drive pests out, correct?
11 A Yes.
12 Q So that didn't change.
13 A Uh-huh.
14 Q Exhibit 3 reads, "Fast and
15 effective, ultrasonic sound waves help repel
16 unwanted pests." That is the same as
17 Exhibit 2, correct?
18 A Correct.
19 Q It has the four illustrations of
20 four pests on there, correct?
21 A Correct.
22 Q Please look at the back side of
23 Exhibit 3 bearing Bates number BHH, LLC
24 000296.
25 A Uh-huh.

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1 Q Now it appears that this
2 packaging omits the note about ultrasonic
3 signals losing intensity, correct?
4 A It is all there. It is there.
5 Q I see, so two paragraphs were
6 consolidated into one paragraph in
7 Exhibit 3, correct?
8 A That is what it looks like.
9 Q Did you have any involvement in
10 changing the product -- the packaging design
11 over from Exhibit 2 to Exhibit 3?
12 A I don't recall exactly. I recall
13 the blue would be more effective because
14 black sometimes doesn't catch a person's
15 attention in a retail store, so the blue is more --
16 the person can see the packaging more.
17 Q So you had some involvement in
18 that decision, correct?
19 A I'm trying to remember exactly.
20 I don't know if we changed it over. Maybe
21 it was me, maybe it was my brother, I don't
22 recall.
23 Q Do you know if any e-mails were
24 sent regarding changing the packaging over
25 from Exhibit 2 to Exhibit 3?

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1 A I don't know. Could have been --
2 as I mentioned, I don't know. It could have
3 been a phone call to change the packaging to
4 the blue.
5 Q But you didn't search for any
6 communications or documents regarding the
7 change from Exhibit 2 to Exhibit 3, correct?
8 A No.
9 Q Do you know of any other -- just
10 to clarify, you don't know of any other
11 packaging design used for this product other
12 than the designs contained in Exhibit 2 and
13 Exhibit 3, correct?
14 A Well, I mentioned also a mail
15 order box.
16 Q Okay. Aside from the mail order
17 box, do you know of any other design use?
18 A Not to my knowledge, no.
19 Q Thank you. You can set Exhibit 3
20 aside.
21 MR. KOPEL: I would like to ask
22 the court reporter to mark as
23 Exhibit 4 a document bearing Bates
24 number BHH LLC.294 to 5.
25 (Thereupon, the Documents

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19 (Pages 70 - 73)

<p>1 bearing Bates number BHH LLC.294 to 5 2 was marked Deposition Exhibit 4 for 3 Identification, as of this date.) 4 BY MR. KOPEL: 5 Q Mr. Mishan, do you have Exhibit 4? 6 A Yes. 7 Q Have you seen it before? 8 A Yes. 9 Q What is it? 10 A An instruction sheet. 11 Q What kind of instruction sheet? 12 A Instruction sheet for the 13 ultrasonic pest repeller with LED night 14 light, AC outlet and safety cover. 15 Q Does Exhibit 4 contain the 16 entirety of the instruction sheet for this product? 17 A Yes. 18 Q Does this instruction sheet 19 appear on the outside of the mail order 20 boxes we discussed earlier? 21 A Appears inside the box. 22 Q So, when the mail order boxes are 23 shipped, there's -- is there any identifying 24 language on the outside of the box as to 25 what is contained inside the box?</p> <p style="text-align: right;">Page 74</p>	<p>1 package, and this is inside like any 2 instruction sheet for any retail package. 3 Q So my question was: The consumer 4 cannot read this instruction sheet until 5 after they have already purchased the unit 6 and opened the packaging, correct? 7 A That is correct, but a lot of the 8 points for the instruction sheet are on the 9 retail packaging as it is, but this is 10 inside a retail package the same way anyone 11 would buy a retail package of a product and 12 have an instruction sheet inside. 13 Q Who wrote this instruction sheet? 14 A My recollection would be Intellitec. 15 Q When did they write it? 16 A I assume the same time when -- 17 before they ship the product. I don't know 18 exactly when. You have a product, you have 19 an instruction sheet. 20 Q Do you know whether anybody at 21 BHH, Van Hauser or Emson had any input as to 22 the contents of this instruction sheet? 23 A Not to my knowledge. It's 24 basically Intellitec. 25 Q Do you know if a draft was sent</p> <p style="text-align: right;">Page 76</p>
<p>1 A It might say the style number, 2 Bell + Howell ultrasonic pest repeller with 3 LED night light, AC outlet and safety cover. 4 And inside the box -- it's a brown box. 5 Inside the box, as I mentioned, 6 you have the product; could be in poly bags, 7 it could be in bubble, like I mentioned, 8 with the instruction sheet. 9 Q Just to clarify -- because I 10 think you said it might contain the name of 11 the product -- do you know that, in fact, it 12 contains the name of the product on the 13 outside of the box? 14 A I am not sure. I believe so. I 15 believe it would. 16 Q Does this instruction sheet also 17 appear -- does this instruction sheet also 18 come inside of the three packs that are sold 19 for this product? 20 A Inside the -- these retail 21 packaging? Yes. 22 Q The consumer cannot see this 23 instruction sheet until they open, physically open 24 the retail packaging, correct? 25 A Retail packaging is -- it is a</p> <p style="text-align: right;">Page 75</p>	<p>1 to anybody at one of those three companies, 2 other than the final version? 3 A I don't know. As I mentioned, I 4 was not involved in that aspect. Like we 5 discussed before, you have the packaging, 6 now you have the instruction sheet. 7 Q So, there may have been prior 8 drafts and communications about this, but 9 you are not sure one way or the other; is 10 that correct? 11 A Could be, but it looks like the 12 basic instruction sheet. 13 Q Do you know whether anybody 14 searched for drafts of this instruction 15 sheet and communications about it in the 16 course of discovery in this case? 17 A Not to my knowledge. 18 Q Do you see on the front side the 19 words "patents pending" appear? 20 A Uh-huh. 21 Q Is patent still pending? 22 A I don't know. She put that 23 terminology in there. She may have applied 24 for the patent and maybe she didn't change 25 it over if she received the patent on it.</p> <p style="text-align: right;">Page 77</p>

<p>1 Q Do you know whether BHH, Emson or 2 Van Hauser hold a patent for the product? 3 A As I mentioned, I believe 4 Intellitec may, but she put the terminology, 5 I think she applied for the patent and that 6 is why it states as such. 7 Q But, in any event, if the patent 8 has been issued, it would be now owned by 9 Intellitec, correct? 10 A If they applied, they would own it. 11 Q To your knowledge, none of the 12 companies you are involved with own the patent, 13 right? 14 A To my knowledge, no. 15 Q Thank you. You can set that aside. 16 You are aware this also involves 17 the Bell + Howell solar animal repeller, correct? 18 A I'm aware it is in the complaint, 19 even though nobody bought the product, yes. 20 Q Is there just one variety of that 21 product or are there different varieties 22 sold under the Bell + Howell name? 23 A Well, in the complaint, there's a 24 specific variety. 25 Q So what variety, to your</p>	<p>1 Q Understood. Thanks for clarifying that. 2 Are the animal repellents uniformly sold in 3 single unit packs? 4 A Maybe I made -- maybe we made a 5 two-pack at one point, but I think it is primarily a 6 one pack. I don't recall. 7 Q So when you say maybe there is a 8 two-pack, you are testifying that you might 9 have sold a two-pack -- 10 A Right. 11 Q -- but you don't remember. 12 A Right. 13 Q You might not have. 14 A Right, maybe a small quantity of 15 a two-pack. 16 Q Who contacted who initially as 17 between Intellitec and Van Hauser regarding 18 the animal repellents? 19 A I believe it was Intellitec 20 contacting Van Hauser, I believe. 21 Q Were you involved in those 22 initial discussions? 23 A Could have been also the same 24 type of -- with Steven Mishan. I don't remember. 25 Q And full disclosure, if you want,</p>
<p>1 recollection, appears in the complaint? 2 A It is -- the product pictured in 3 the complaint is one that has distance of I 4 think 30 feet and solar powered. 5 Q Okay. What other varieties are 6 for sale for the animal repeller under the 7 Bell + Howell name? 8 A From what I recall -- and again I 9 really focused only on the 30 feet, as I 10 mentioned, as it is mentioned in the 11 complaint, but I believe there is a 50 feet, 12 70 feet. I believe we have also one with an 13 extra, like, strobe light, I believe. That 14 is what I remember right now. 15 Q You mentioned four varieties. Do 16 you think that there might be more that you 17 can't remember, or do you think that is about it? 18 A I think that is about it. At least that's 19 all -- I think we may have had a nonsolar one also. 20 Q When you say nonsolar, you mean 21 battery powered? 22 A Yes. Well, the way solar -- 23 solar also works through a battery, because 24 the solar charges up the battery, so it is 25 both considered battery.</p>	<p>1 I'm going to ask you all the same questions, 2 so if you want to answer them, you know -- 3 Do you know if they sent any 4 specifications or testing at the time? 5 A Sorry? 6 Q Do you know if Intellitec sent 7 any specifications or testing at the time? 8 A Yes, which we included in the -- 9 so, you have actually that one at that point, and 10 they also did an initial one as well. So we 11 have two independent testings on -- also on 12 the animal repellents. 13 Q Okay. And do you know whether 14 Intellitec sent along any specifications 15 regarding the product design or any other 16 documents containing information about the 17 product at that time? 18 A Same type of answer as the first one. 19 Q Okay. Is that -- 20 A I mean -- 21 Q So you don't -- so they might 22 have, but you are not aware if they did or not? 23 A If they -- please repeat the question. 24 Q So they might have sent such 25 documents, such documents might have been</p>

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21 (Pages 78 - 81)

<p>1 exchanged, but you don't recall --</p> <p>2 A There is more information --</p> <p>3 Q -- or you weren't involved.</p> <p>4 A There's more involvement with my</p> <p>5 brother, Steven Mishan. Intellitec, as I</p> <p>6 mentioned, could have been via phone,</p> <p>7 face-to-face, e-mail, same type of -- from</p> <p>8 what I recall.</p> <p>9 Q And similarly, you are not aware</p> <p>10 whether anyone searched for those documents</p> <p>11 in connection with this case, correct, if they exist?</p> <p>12 A Not to my knowledge.</p> <p>13 Q Did you search for a copy or</p> <p>14 design of any packaging for any animal</p> <p>15 repeller in connection with this case?</p> <p>16 A What do you mean did I -- what do</p> <p>17 you mean did I search? I am sorry.</p> <p>18 Q Did you search your computer,</p> <p>19 your e-mail, your possessions otherwise for</p> <p>20 any design, any -- any illustration of the</p> <p>21 design of the packaging for the animal</p> <p>22 repellers in connection with this case?</p> <p>23 A No.</p> <p>24 Q You didn't produce any</p> <p>25 illustration of any design for the packaging</p> <p style="text-align: right;">Page 82</p>	<p>1 Exhibit 5 for Identification, as of</p> <p>2 this date.)</p> <p>3 BY MR. KOPEL:</p> <p>4 Q Mr. Mishan, do you have Exhibit 5?</p> <p>5 A Yes.</p> <p>6 Q Have you seen it before?</p> <p>7 A Yes.</p> <p>8 Q What is it?</p> <p>9 A It is a product packaging with</p> <p>10 the product of Bell + Howell solar animal repeller.</p> <p>11 Q Who designed this packaging?</p> <p>12 A I believe it is Intellitec.</p> <p>13 Q Do you know when they designed it?</p> <p>14 A Not exactly.</p> <p>15 Q Were you involved in</p> <p>16 communications with Intellitec regarding the</p> <p>17 design of this packaging?</p> <p>18 A I don't recall if it was me or if</p> <p>19 it was Steven.</p> <p>20 Q But to your knowledge, nobody</p> <p>21 searched for documents or communications in</p> <p>22 connection with the design, correct?</p> <p>23 A You asked me that question</p> <p>24 before, and I said that, no, we did not</p> <p>25 search for it, but you have it right before</p> <p style="text-align: right;">Page 84</p>
<p>1 of the animal repellers in connection with</p> <p>2 this case, right?</p> <p>3 A I saw they had it in the complaint that --</p> <p>4 no one even bought the product, but to answer the</p> <p>5 question we did not produce packaging illustrations,</p> <p>6 et cetera, for a product that they didn't even</p> <p>7 purchase.</p> <p>8 Q Did you make the decision to not</p> <p>9 produce illustrations of the packaging</p> <p>10 because the plaintiff in this case did not</p> <p>11 purchase that product?</p> <p>12 MR. WING: Object to form.</p> <p>13 THE WITNESS: We presented what</p> <p>14 we presented to -- as per requested,</p> <p>15 from my recollection. I don't recall.</p> <p>16 Maybe it was in there to ask for</p> <p>17 packaging, but I don't recall. Could</p> <p>18 be in there. I don't recall.</p> <p>19 MR. KOPEL: I would like to ask</p> <p>20 the court reporter to mark as</p> <p>21 Exhibit 5 a physical packaging unit</p> <p>22 for solar animal repeller.</p> <p>23 (Thereupon, the Physical</p> <p>24 Packaging Unit For Solar Animal</p> <p>25 Repeller was marked Deposition</p> <p style="text-align: right;">Page 83</p>	<p>1 you right here.</p> <p>2 Q Do you see on Exhibit 5 it says,</p> <p>3 "protects your yard for unwanted animals"?</p> <p>4 A Okay.</p> <p>5 Q Let me take a step back, actually.</p> <p>6 A Uh-huh.</p> <p>7 Q Do you know of any other packaging</p> <p>8 used for the sale of Bell + Howell's solar animal</p> <p>9 repellers, other than the one in Exhibit 5?</p> <p>10 A Could have had a mail order</p> <p>11 packaging. From my recollection, I believe</p> <p>12 there was. Maybe beforehand we didn't have</p> <p>13 the raccoon. I believe maybe there was --</p> <p>14 one didn't have the raccoon at one point.</p> <p>15 This is effectively just showing the trash.</p> <p>16 That is all I remember.</p> <p>17 Q I'm sorry, what -- can you just</p> <p>18 repeat what you just said about the trash?</p> <p>19 A The raccoon, you know, showing,</p> <p>20 keeps animals away from trash. I mean,</p> <p>21 there may have been another package before</p> <p>22 having that.</p> <p>23 Q Do you think there were two, two</p> <p>24 versions of the packaging?</p> <p>25 A I believe maybe they didn't have</p> <p style="text-align: right;">Page 85</p>

<p>1 that picture.</p> <p>2 Q Is it your recollection, is the</p> <p>3 packaging the same in all other respects?</p> <p>4 A Pretty much, I think, from what I</p> <p>5 remember, from what I remember.</p> <p>6 Q Now, when you say that a raccoon</p> <p>7 was added, do you mean solely the picture</p> <p>8 with the raccoon and the trash, or do you</p> <p>9 also mean that a picture of a raccoon was</p> <p>10 added to the portion with illustrations of</p> <p>11 the animals meant to be repelled by this</p> <p>12 product?</p> <p>13 A I believe added -- had the</p> <p>14 picture with the terminology keeps animals</p> <p>15 away -- animals from trash.</p> <p>16 Regarding -- to clarify the other</p> <p>17 question, you said does any other -- maybe</p> <p>18 at one point we added an ultrasonic sound</p> <p>19 with one speaker, and then we added -- one</p> <p>20 has sonic and ultrasonic sound, so just to</p> <p>21 be, to clarify.</p> <p>22 Q Did you sell products with solely</p> <p>23 ultrasonic sound concurrently with the</p> <p>24 products that had both sounds, or did you</p> <p>25 sell first the products with solely</p> <p style="text-align: right;">Page 86</p>	<p>1 think she mentioned to me, mentioned to my</p> <p>2 brother.</p> <p>3 Q And by "she," who do you mean?</p> <p>4 A Intellitec.</p> <p>5 Q And who do you mean by "she"?</p> <p>6 A Her name is Debbie.</p> <p>7 Q Debbie what?</p> <p>8 A I think it's Feurstien. I'm not</p> <p>9 sure of the spelling. I think it's F-E-U --</p> <p>10 Feur, F-E-U-R, Stien, S-T-I-E-N.</p> <p>11 Q This product, is this product</p> <p>12 meant for use indoors or outdoors?</p> <p>13 A Primarily, an outdoor product. I</p> <p>14 don't know if they use this indoors. Probably</p> <p>15 outdoors.</p> <p>16 Q It's your expectation that users</p> <p>17 would -- consumers would use this product</p> <p>18 outdoors, correct?</p> <p>19 A I would assume they would use it</p> <p>20 outdoors. I don't know if they have a squirrel</p> <p>21 upstairs, I don't know, in their attic, but</p> <p>22 it is primarily an outdoor -- outdoor.</p> <p>23 Q How much money does Van Hauser</p> <p>24 pay Intellitec per unit of the solar animal</p> <p>25 repellers?</p> <p style="text-align: right;">Page 88</p>
<p>1 ultrasonic sound and then upgrade to the</p> <p>2 products with both?</p> <p>3 A Solely ultrasonic sound in the</p> <p>4 beginning, and then -- and then we did the</p> <p>5 sonic and ultrasonic, but the testing, from</p> <p>6 my recollection, was even -- even with just</p> <p>7 ultrasonic alone, and the sonic is just an</p> <p>8 additional feature in there.</p> <p>9 Q When was the sonic feature added?</p> <p>10 A I don't recall exactly.</p> <p>11 Q Can you recall approximately?</p> <p>12 A Four years? I'm not sure.</p> <p>13 Q So, approximately 2012, 2013?</p> <p>14 A Three years, approximately.</p> <p>15 Q Who made the decision to add that</p> <p>16 feature?</p> <p>17 A I think it was Intellitec.</p> <p>18 Q Did Intellitec consult Emson, Van</p> <p>19 Hauser or BHH regarding adding that feature?</p> <p>20 A I believe so.</p> <p>21 Q Did you take any part in those</p> <p>22 consultations?</p> <p>23 A Consultation -- I mean,</p> <p>24 discussions, I would say. I believe that</p> <p>25 she mentioned it. Could have been -- I</p> <p style="text-align: right;">Page 87</p>	<p>1 A I am trying to remember. I don't</p> <p>2 remember exactly.</p> <p>3 Q Do you remember approximate?</p> <p>4 A Maybe around \$4, I believe. I'm</p> <p>5 not sure.</p> <p>6 Q Do you know if the prices</p> <p>7 remained the same over time or if the prices</p> <p>8 changed over time?</p> <p>9 A The cost?</p> <p>10 Q Correct.</p> <p>11 A Costs of goods change. We</p> <p>12 negotiate. As I mentioned, retail packaging</p> <p>13 could be one price; mail order box, smaller</p> <p>14 box, less; you know, size and pictures, et</p> <p>15 cetera. I think it's roughly -- I think</p> <p>16 it's roughly around four, from what I</p> <p>17 remember. I could be wrong.</p> <p>18 Q Okay. Do you know what the</p> <p>19 profit margin is on these products?</p> <p>20 A What are you asking me? Profits,</p> <p>21 profit, a person has to determine all</p> <p>22 different aspects of it. So, what -- what's</p> <p>23 your -- what's your question?</p> <p>24 Q Defining profits as revenue minus</p> <p>25 cost of goods sold.</p> <p style="text-align: right;">Page 89</p>

1 A Well, you have other things. You
2 have to take in consideration returns, charge or
3 whatever, anything. You know, anything you
4 have to take into consideration. So, I don't know.
5 Maybe we sold it for -- maybe runs from
6 eight to ten dollars, I guess.
7 Q Do you know how much Van Hauser
8 pays to Intellitec for the pest repellers?
9 A One second. I think it was also
10 I believe 375-ish, something like that,
11 \$3.75. But if it's cost overseas, then you
12 have to bring in the goods, you've got to
13 pay duty, freight, et cetera. So I'm giving
14 you approximate first costs.
15 Q Do the costs differ by variety of
16 pest repeller?
17 A I think pest repel is one duty.
18 I'm not sure if the duty is the same for the
19 animal repeller. I believe -- I believe it
20 is, but I'm not sure.
21 Q And same question for the animal
22 repeller: Do you know if the costs differ
23 by variety?
24 A Wait a minute, I thought I -- I
25 thought I answered that. Are you asking

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1 about the duty?
2 Q Oh, no, no, no. Just I'm talking
3 about the cost, cost of goods paid to -- the
4 money paid from Van Hauser to Intellitec --
5 A For the animal repeller?
6 Q -- for the goods?
7 Yes.
8 A I mentioned before it was
9 approximately \$4 --
10 Q Does it differ by --
11 A -- from what I remember.
12 Q Right. And my question was:
13 Does that differ by variety of the product?
14 A As I mentioned, this is a retail
15 package, and one -- mail order box might be
16 a little bit less. And if you have 50 feet,
17 could be a little bit more; 70 feet could be
18 a little bit more.
19 Q And I know we discussed this
20 information regarding the pest repellents.
21 But regarding the animal repellents, some are
22 sold by Van Hauser and some are sold by
23 Emson, is that correct?
24 A I believe so, yes.
25 Q Similar to the pest repellents,

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1 that's primarily determined by whether the
2 retailer has a pre-existing relationship
3 with one of those companies, correct?
4 A Vendor number like we described
5 previously, yes.
6 Q Do you see on the packaging of
7 Exhibit Number 5 the words "manufactured and
8 distributed by Van Hauser"?
9 A On the back, yes.
10 Q And that appears uniformly on all
11 units of the product, excepting for the mail
12 order, correct?
13 A I'm not sure. Maybe it says
14 manufactured and distributed, maybe it just
15 says distributed. Usually the terminology
16 is distributed.
17 Q There are no units that make any
18 mention of Emson, correct?
19 A I believe it's all lumped under
20 Van Hauser. I don't believe anything says
21 Emson. Not that I remember.
22 Q Why does it say manufactured by
23 Van Hauser? Isn't the product manufactured
24 by Intellitec?
25 A It is manufactured by Intellitec,

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1 and usually it does say distributed. So, as
2 I mentioned, I usually -- usually the terminology
3 is distributed. I don't recall why they
4 used the terminology manufactured here.
5 Q Okay. Thank you. You can put
6 that aside. I think I need another quick break.
7 (Brief break.)
8 MR. KOPEL: I would like to ask
9 the court reporter to mark as
10 Exhibit 6 this action complaint in
11 this case.
12 (Thereupon, the Action
13 Complaint was marked Deposition
14 Exhibit 6 for Identification, as of
15 this date.)
16 BY MR. KOPEL:
17 Q Mr. Mishan, do you have Exhibit 6?
18 A Yes.
19 Q Take your time to look through it
20 and let me know when you're ready for me to
21 ask my next question. I'm ready now.
22 A I told you, you know. How many
23 pages is this one? Close to 20 pages, you
24 know. If at all, there was a relevant term -- do
25 you want me to read the whole thing?

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24 (Pages 90 - 93)

<p>1 Q No. 2 Have you seen this document 3 before? 4 A Yes. 5 Q What is it? 6 A It looks like a complaint by 7 Joanna Hart. And I think Amanda Parke, I 8 think she's no longer involved. That's what 9 I see here. 10 Q Can you please turn to page six? 11 A Yes. 12 Q Do you see pages six through 13 eight show images from a television commercial 14 for the Bell + Howell solar animal repellents? 15 A Yes. 16 Q Have you seen this commercial 17 before? 18 A Yes. 19 Q Were you involved in making the 20 commercial? 21 A No. 22 Q Who made the commercial? 23 A Well, "made" is a relative term. 24 What do you mean by actually "made"? 25 Q Okay. So, who produced this</p> <p style="text-align: right;">Page 94</p>	<p>1 BY MR. KOPEL: 2 Q Do you know who wrote the 3 commercial? 4 A I believe the production house, 5 but I'm not sure. 6 Q Do you know when it aired? 7 A I don't remember the date. 8 Q Do you know what channel it aired on? 9 A Cable, I guess. I don't know the 10 channels. I don't get involved in that. 11 Q Do you know whether anyone 12 searched for any documents or communications 13 utilized in making, writing, production, of 14 this commercial? 15 A I don't know. I don't get 16 involved in it. As I mentioned, Eddie 17 Mishan gets involved with I guess their 18 production house, which they would make -- 19 they would, whatever, make. The production 20 house would probably write the script and 21 produce the commercial maybe. I don't know 22 how they communicated. 23 Q Would you consider this 24 commercial an advertisement? 25 A Well, what's -- the definition of</p> <p style="text-align: right;">Page 96</p>
<p>1 commercial? 2 A I'm not sure. I don't get 3 involved in that. 4 Q Was Intellitec involved in making 5 this commercial? 6 A I don't believe so. 7 Q Was BHH involved in making this 8 commercial? 9 A I would say no. 10 Q Was Emson involved in making this 11 commercial? 12 A I would say no. 13 Q Was Van Hauser involved in making 14 this commercial? 15 A I believe Van Hauser, yes, 16 involved, for lack of a better term. 17 Q Who at Van Hauser oversaw the 18 making of this commercial? 19 MR. WING: Object to form. 20 THE WITNESS: Well, Eddie 21 Mishan would be, for lack of a better 22 term, involved in having the 23 commercial produced, but they were 24 produced with an outside production 25 house.</p> <p style="text-align: right;">Page 95</p>	<p>1 "advertising" is? 2 Q I don't have a dictionary on me 3 right now. I was just asking if you would 4 consider this commercial to fall within how 5 you define the word advertising. 6 A Advertising, it's -- there's a 7 commercial showing it on -- showing the 8 product on TV and selling the product. So, 9 I guess that would be deemed an 10 advertisement. 11 Q Do you know whether sales 12 increased after this commercial was aired? 13 A Well, customers would -- do I 14 know if it increased? Advertise products, 15 any product on TV makes people aware of the 16 product. 17 Q So you believe that sales 18 increased as a result of this commercial? 19 A I don't -- I can't quantify, but 20 I would -- can't quantify. 21 Q Well, you can't quantify, but you 22 believe that sales as a general matter 23 likely increased as a result of -- 24 A As a general matter, if you 25 advertise -- if you have an advertisement on</p> <p style="text-align: right;">Page 97</p>

<p>1 TV, it would probably increase sales.</p> <p>2 Q Do you know -- do you have any</p> <p>3 approximation of when this commercial aired?</p> <p>4 A I don't remember.</p> <p>5 Q Do you remember if it was before</p> <p>6 or after the year 2013?</p> <p>7 A I think before 2013.</p> <p>8 Q Do you remember if it was before</p> <p>9 or after 2010?</p> <p>10 A Maybe around 2010. I'm guesstimating.</p> <p>11 Q Do you know how many times it aired?</p> <p>12 A I wouldn't know that because I don't --</p> <p>13 I'm not involved in that.</p> <p>14 Q Do you know what the costs were</p> <p>15 either in producing the commercial or airing it?</p> <p>16 A No.</p> <p>17 Q Can you please turn to page 10?</p> <p>18 And to clarify, I'm actually -- I'm going to</p> <p>19 reference paragraphs 28 and 29. 28 actually</p> <p>20 begins on page nine.</p> <p>21 A Okay.</p> <p>22 Q Do you see these paragraphs</p> <p>23 discuss a television segment, a news</p> <p>24 television segment called Deal or Dud?</p> <p>25 A I see it.</p> <p style="text-align: right;">Page 98</p>	<p>1 what they determined. That's their</p> <p>2 determination, but we have independent</p> <p>3 studies.</p> <p>4 Q Do you know if anyone from any of</p> <p>5 any of those -- from any of the three</p> <p>6 companies provided the news team with the</p> <p>7 independent studies you're referencing?</p> <p>8 A I'm not sure.</p> <p>9 Q To your knowledge, no one</p> <p>10 searched for any communications or documents</p> <p>11 in connection with this news segment, right?</p> <p>12 A Not to my knowledge.</p> <p>13 Q Do you know if anyone</p> <p>14 investigated the cause of why it may not</p> <p>15 have worked in this news segment?</p> <p>16 MR. WING: Object for form.</p> <p>17 THE WITNESS: Investigate why?</p> <p>18 We have our own studies. Investigate</p> <p>19 it for them? We have our studies.</p> <p>20 BY MR. KOPEL:</p> <p>21 Q Do you see the photo under</p> <p>22 paragraph 29?</p> <p>23 A Yes.</p> <p>24 Q And do you see it's a photo of a</p> <p>25 raccoon standing right next to what appears</p> <p style="text-align: right;">Page 100</p>
<p>1 Q Do you see that the Bell + Howell</p> <p>2 solar animal repeller was featured on this</p> <p>3 news segment?</p> <p>4 MR. WING: Object to form.</p> <p>5 THE WITNESS: It says that it</p> <p>6 does here.</p> <p>7 BY MR. KOPEL:</p> <p>8 Q When was the first time you</p> <p>9 learned about this news segment?</p> <p>10 A I don't remember exactly.</p> <p>11 Q Did you know about this news</p> <p>12 segment before or after the filing of this complaint?</p> <p>13 A I vaguely remember it. I'm not</p> <p>14 sure exactly.</p> <p>15 Q Do you know whether anyone</p> <p>16 contacted BHH, Emson or Van Hauser regarding</p> <p>17 this news segment?</p> <p>18 A I don't know. Maybe they</p> <p>19 contacted Eddie. This is their opinion.</p> <p>20 Q Well, you're not sure whether or</p> <p>21 not the news team contacted any of those</p> <p>22 three companies in connection with this news</p> <p>23 segment.</p> <p>24 A I just said I'm not sure. As I</p> <p>25 mentioned also, this is relative to their --</p> <p style="text-align: right;">Page 99</p>	<p>1 to be a Bell + Howell solar animal repellant?</p> <p>2 A Well, it's a fuzzy picture. It</p> <p>3 looks like -- I mean, it looks like a</p> <p>4 raccoon. Looks like -- from what I see, it</p> <p>5 looks -- I don't have -- you don't have the</p> <p>6 exact picture of animal repeller, you don't</p> <p>7 have the exact picture of the raccoon, but</p> <p>8 it looks like you have it there.</p> <p>9 Q If, in fact, on this news segment</p> <p>10 the Bell + Howell solar animal repeller</p> <p>11 failed to repel a raccoon less than a foot</p> <p>12 away, would you still classify that as their</p> <p>13 opinion?</p> <p>14 A We have --</p> <p>15 MR. WING: Object to form.</p> <p>16 THE WITNESS: We have</p> <p>17 independent studies on our product.</p> <p>18 BY MR. KOPEL:</p> <p>19 Q My question --</p> <p>20 A That's -- that's what we're</p> <p>21 working with. And again, this is about a</p> <p>22 product nobody bought here.</p> <p>23 Q So, would you still classify it</p> <p>24 as their opinion if the device failed to</p> <p>25 repel a raccoon less than a foot away?</p> <p style="text-align: right;">Page 101</p>

<p>1 MR. WING: Object to form. 2 THE WITNESS: They have their 3 opinion. I can take Tylenol, it 4 doesn't get rid of my headache. So, I 5 don't understand the question. We 6 have independent studies. 7 BY MR. KOPEL: 8 Q Okay. And to your knowledge, no 9 one at any of the three companies 10 investigated why it did not work in this, or 11 purported not to work in this news segment? 12 A We have our independent studies. 13 I don't know if there was an investigation 14 that a raccoon wasn't -- didn't repel. 15 Q Please turn to paragraph one of 16 the complaint. You see paragraph one reads: 17 This is a class action lawsuit on behalf of 18 purchasers of Bell + Howell ultrasonic pest 19 repellers and Bell + Howell solar animal 20 repellers collectively, the repellers? Did 21 you see that? 22 A I see that sentence. 23 Q Do you see anywhere in here where 24 it limits the putative class to purchasers of solely 25 the Bell + Howell ultrasonic pest repellers</p> <p style="text-align: right;">Page 102</p>	<p>1 Howell solar animal repellers collectively, 2 the repellers? 3 A Okay. 4 Q Okay. Paragraph one does not 5 read: This is a class action lawsuit on 6 behalf of purchasers of Bell + Howell 7 ultrasonic pest repellers with an extra 8 outlet and light, does it? 9 A No, it doesn't say that. 10 Q It says in general Bell + Howell 11 ultrasonic pest repellers, correct? 12 A That's what it says. 13 Q But you solely prepared for your 14 testimony to focus on the details 15 surrounding that one model, correct? 16 A That was my focus, because that 17 was what was pictured and that's what -- 18 that's what's pictured here. 19 Q And you solely produced documents 20 pertaining to that one model, correct? 21 A Correct. 22 MR. KOPEL: So, I'd like to ask 23 the court reporter to please mark as 7 24 website from Amazon.com for the 25 product Bell + Howell 50104 motion</p> <p style="text-align: right;">Page 104</p>
<p>1 which contain an extra light and outlet? 2 A I don't understand. Repeat your 3 question, please. 4 MR. KOPEL: Can you repeat the 5 question? 6 (Thereupon, the record was read 7 back by the reporter as recorded 8 above.) 9 THE WITNESS: I concentrated on 10 what was pictured in the complaint and 11 that's what I -- and I answered all 12 your questions beforehand, and I told 13 you on the solar animal panel, nobody 14 even bought the product, so -- but we 15 provided information to you. 16 BY MR. KOPEL: 17 Q Okay. Can you please answer the 18 question that was asked? 19 A I think the question was a little 20 too long for me to follow, to be honest with you. 21 Q Okay. Please turn to paragraph 22 one of the complaint. Do you see that 23 paragraph one reads: This is a class action 24 lawsuit on behalf of purchasers of Bell + 25 Howell ultrasonic pest repellers and Bell +</p> <p style="text-align: right;">Page 103</p>	<p>1 activated ultrasonic solar powered 2 with rechargeable batteries. 3 (Thereupon, the Amazon.com 4 Website for Product Bell + Howell 5 50104 was marked Deposition Exhibit 7 6 for Identification, as of this date.) 7 BY MR. KOPEL: 8 Q Mr. Mishan, do you have Exhibit 7? 9 A Yes. 10 Q Do you recognize it? 11 A It looks like -- do I recognize 12 it? It looks like a copy from Amazon for 13 the Bell + Howell 50104 motion activated 14 ultrasonic solar powered with rechargeable 15 batteries. 16 Q Have you visited this web page before? 17 A I don't know about this specific, 18 but I've searched from time to time. 19 Q So you've searched for the animal 20 repeller device on Amazon before, correct? 21 A I believe so. Three stars, 441 22 reviews. 23 Q Does Van Hauser sell the devices 24 directly to Amazon? 25 A I'm not sure. I believe it's</p> <p style="text-align: right;">Page 105</p>

1 through like a distributor and they, in
 2 turn, would sell to Amazon, I believe.
 3 Q Okay. So, these orders are not
 4 fulfilled by Emson or Van Hauser, correct?
 5 A Well, again, I'm not sure. It
 6 could be through a distributor who, in turn,
 7 would sell to Amazon, or maybe we sold to
 8 Amazon, but I'm really not sure.
 9 Q So you don't know one way or the
 10 other whether --
 11 A I'm not -- I'm not sure exactly.
 12 Q Just let me finish my question.
 13 A All right.
 14 Q You don't know one way or the
 15 other whether Emson and Van Hauser dealt
 16 directly with Amazon regarding this product?
 17 A I don't know if -- I don't know
 18 if Van Hauser or Emson either sold it to
 19 Amazon or sold to a third party who sold it
 20 to Amazon.
 21 Well, it says here, actually.
 22 Ships from and sold by Amazon.com. I think
 23 that sounds like they shipped it to Amazon;
 24 they, in turn -- sounds like they are doing
 25 the fulfillment. That's what it sounds like.

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1 Q Okay. And this retail price was, to
 2 your knowledge, decided by Amazon or some --
 3 some third party?
 4 A Yeah, Amazon, Amazon has their --
 5 what they do.
 6 Q Do you know what the average
 7 retail price for these devices is?
 8 A I think it fluctuates between
 9 19.99 to 29.99, I believe.
 10 Q And where do you have that
 11 information from?
 12 A Well, you asked me, and I think
 13 it's that for retail. Well, it says here list price
 14 29.99, so that gives me an indication. And
 15 I believe it's 19.99, I believe, and over
 16 here it says the price is 23.19.
 17 Q Who sets the list price?
 18 A I believe -- maybe on the
 19 commercial it said 29.99, from what I recall,
 20 so maybe that's how they have a list price.
 21 Q Does either Emson or Van Hauser
 22 have -- send out manufacturer suggested pricing?
 23 A Sending out? I don't know what
 24 you mean by sending. I don't even know --
 25 what do you mean, sending out? What do you

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1 mean, they send out?
 2 Q Do either Emson or Van Hauser
 3 publicize or either -- or advise third parties of a
 4 manufacturer's suggested retail price for
 5 the animal --
 6 A Maybe --
 7 Q -- repellers?
 8 A We may have told them on -- maybe
 9 told them on the phone that's the manufactured
 10 suggested retail and then they sold it for
 11 23.19, from what I see here.
 12 Q So, there is, in fact, a
 13 manufacturer's suggested retail price for
 14 this device, is that right?
 15 A I'm guessing. I don't know.
 16 This thing, I mentioned -- you
 17 asked me before. I said retail fluctuates
 18 between 19.99 to 29.99.
 19 Q What's the retail pricing for the
 20 pest repellers?
 21 A I believe retailed at, I believe,
 22 around 19.99, 18.88, but the way -- you
 23 know, then sometimes it could be on Amazon,
 24 sometimes their -- their prices fluctuate.
 25 Cost could be higher. I don't know.

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1 Q Do you know whether there's a
 2 manufacturer's suggested retail price for
 3 the pest repellers?
 4 A No. Not in my head, no.
 5 Q There might be, but --
 6 A There could be.
 7 Q -- you don't know, right?
 8 A There could be. I don't know.
 9 Q Before you mentioned that there
 10 were 441 customer reviews, correct?
 11 A Uh-huh, yes.
 12 Q Why did you bring that up?
 13 A Just looking. Then I mentioned
 14 three stars, from what I see here.
 15 Q Okay. So that's on page three of
 16 the document, right?
 17 A I don't know. I see the front,
 18 it looks like three stars.
 19 Q Oh, okay. Can you please turn to
 20 page three of the document?
 21 A Okay.
 22 Q For the record, this document is
 23 not -- not -- the pages are not numbered.
 24 A Okay.
 25 Q But I'm referring to the third

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1 page of the document.
 2 A Okay.
 3 Q See at the bottom of this page it
 4 says "customer reviews"?
 5 A Yes.
 6 Q It says "441"?
 7 A Uh-huh.
 8 Q Do you see that 46 percent of
 9 reviewers gave the product one star?
 10 A And I see that 21 percent gave
 11 five stars and 13 percent gave four star and
 12 11 percent gave three star, so I see all of them.
 13 Q Right. And nine percent gave two
 14 stars, correct?
 15 A I see you have it before you, so
 16 you see all the percentages there.
 17 Q Have you ever reviewed or looked
 18 at customer reviews on Amazon for either the
 19 animal repellents or the pest repellents?
 20 A If I glance from time to time,
 21 but not in detail.
 22 Q See the first review here is
 23 titled defective or fraudulent or both?
 24 A I see it says that, but, again, I
 25 see 21 percent of the people. 21 percent of

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1 441, that's a good amount. And 30 percent
 2 have four stars. So some people gave a
 3 great rating and some people, as you see
 4 here, gave it not great ratings. They're both --
 5 Q Okay. And --
 6 A Like any product.
 7 Q The majority, the majority of
 8 reviewers gave it either one star or two
 9 star, correct?
 10 A The majority -- well, the
 11 majority is 55 percent, but then -- then the
 12 other 45 percent gave five star, four star
 13 and three star. So it looks like a lot of
 14 customers did like it. And maybe there's
 15 other areas that they liked as well.
 16 Q You see the first review is a
 17 verified purchase written by someone named
 18 Larry Deemer?
 19 A Where is that? I'm sorry.
 20 Q It's the first review.
 21 A Okay.
 22 Q Do you see on the next page, his
 23 review reads: I heard nothing coming from
 24 the unit's voice box and neither did the
 25 domestic animals, three dogs" --

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1 A Where are you? I'm sorry.
 2 Q That's fine. It's in the first paragraph.
 3 A On page what?
 4 Q Four -- four lines from the bottom.
 5 A Okay, I see that.
 6 Did you print out also the -- all
 7 the positive ones, or are you just looking
 8 at the ones that you want to produce with a
 9 one star? Where are my five star and four
 10 star? Did you print those out for me, too,
 11 so I could comment on those?
 12 Q Well, in general, I am here to
 13 ask you questions. However, I will
 14 represent to you that this is -- this is
 15 exactly the page as it appears when you hit
 16 print from Amazon.com.
 17 A Well, you could also print --
 18 then you could also, from my understanding,
 19 print them all. So, you could print what
 20 you're looking for. If you want to look --
 21 if you want to see all, then, from my
 22 understanding, you could keep on going.
 23 Q Do you have any reason to doubt
 24 my representation that this is an exact
 25 printout of this product's page on Amazon.com?

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1 A No, but I'm seeing also five
 2 star. "Take it from a farmer, they work.
 3 The motion detectors do work. No coons in
 4 my corn this year."
 5 "Take it from" -- I'm looking at
 6 a five-star review. "Take it from a farmer,
 7 they work. The motion detectors do work.
 8 No coons in my corn this year." No coons,
 9 C-O-O-N-S, in my -- I don't know, this is --
 10 So you were asking me about a
 11 customer didn't like it. I'm reading to you
 12 a customer who obviously did like it. So
 13 it's relative to the consumer.
 14 Q Okay. So you see that the
 15 first -- you see the first review gave a one
 16 star and says that animals had no reaction
 17 whatsoever?
 18 MR. WING: Object to form,
 19 foundation.
 20 THE WITNESS: These are
 21 customer reviews. I have my three --
 22 I told you, I have my independent
 23 third party, and where we said there's
 24 people have -- some people wrote
 25 certain type of reviews, positive or

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<p>1 negative. I'm sure you could find on 2 Amazon almost -- many, many products 3 that have reviews all over the board. 4 BY MR. KOPEL: 5 Q Are you done? 6 A I guess for now. 7 Q Okay. My question was: Do you 8 see that language there? 9 A Which language? 10 MR. WING: Same objection. 11 THE WITNESS: Which language? 12 BY MR. KOPEL: 13 Q The first review, so it's on the 14 next page. This would be page four of the 15 document, in all caps, Mr. Deemer says the 16 animals had no reaction whatsoever to the 17 products. Do you see that language? 18 MR. WING: Object to form, 19 foundation. 20 THE WITNESS: All right. But I 21 have my independent -- yeah, that's 22 what he writes, but we have our 23 independent studies and we have 24 positive reviews, too. 25 BY MR. KOPEL:</p> <p style="text-align: right;">Page 114</p>	<p>1 A Well, I know that I see 2 45 percent of the people do -- are happy 3 with the product. I don't know if -- I 4 don't know how he did everything here. I 5 didn't read it, if he used it correctly or whatnot. 6 Q Mr. Mishan, I'm -- I don't want 7 to fight with you, I just want to ask you to 8 please focus on the questions that I am 9 asking and try to answer them without adding 10 additional commentary. 11 Does it concern you -- 12 A Okay. I'll do the best I can. 13 Q Thank you, I appreciate it. And 14 again, I'm not trying to start up here. I'm 15 just -- the way a deposition works is I ask 16 questions and you give answers to it. 17 A I do the best I can. 18 Q Does it concern you that the 19 majority of the 441 reviewers gave the 20 product either one star or two stars? 21 A Does 55 percent concern me? I 22 have 45 percent that are -- seem to be happy 23 with the product. 24 Q So it does not concern you? 25 A Concern is a relative term. I</p> <p style="text-align: right;">Page 116</p>
<p>1 Q Does it concern you that the 2 majority of consumers on Amazon.com give the 3 product either one star or two stars? 4 MR. WING: Object to form. 5 THE WITNESS: These are Amazon 6 reviews. Maybe there's other reviews 7 that they give more. I don't know. 8 BY MR. KOPEL: 9 Q Does it concern you that the 10 majority of reviewers, the majority of the 11 441 reviewers on Amazon, gave the product 12 either one star or two stars? 13 A You have 55 -- 14 MR. WING: Same objection. 15 THE WITNESS: You have 16 55 percent gave two stars or one star, 17 and you have 45 percent that gave 18 five, four or three. So many people 19 are satisfied. 20 BY MR. KOPEL: 21 Q Does it concern you? 22 A I don't know what you mean by 23 concern. What do you mean by concern? 24 Q You don't know what the word 25 "concern" means?</p> <p style="text-align: right;">Page 115</p>	<p>1 have my independent studies and I have that. 2 I don't know -- concern, I don't know how to 3 really quantify what's concerning, but do I 4 always want to make products always, you 5 know, improve better? Would I rather have 6 everybody have five-star reviews? It's 7 relative. It's not -- you know, this is 8 what -- this is what we have right here. 9 Concern me? I don't know how to 10 answer the question, I'm sorry -- 11 Q Do you have any -- 12 A I'll answer to the best of my ability. 13 Q Sorry. Are you done? 14 A I think so. 15 Q Okay. Do you have any 16 understanding of why so many purchasers had 17 a bad experience with the product, notwithstanding 18 your third-party testing? 19 MR. WING: Object to form of 20 the question. 21 THE WITNESS: We have also 22 45 percent of the people were happy with it. 23 Do I know why? No, I didn't 24 analyze each one of these reviews. 25 Maybe they didn't work -- maybe they</p> <p style="text-align: right;">Page 117</p>

1 didn't use it correctly. I don't know
 2 what the weather conditions are. I
 3 don't know. I don't know the
 4 conditions that they used it under.
 5 So, I have a good amount of
 6 people that did like it; strong amount
 7 of people did like it; some people
 8 didn't like it also. We had both.
 9 BY MR. KOPEL:
 10 Q Did you or anyone else at either
 11 Emson, Van Hauser or BHH, do anything to
 12 address the fact that so many consumers were
 13 dissatisfied with the product?
 14 MR. WING: Object to form,
 15 foundation.
 16 THE WITNESS: You asked me
 17 about did I see this document, I said,
 18 you know, I've seen from time to time.
 19 So, you're showing me right now
 20 and saying did I address -- the
 21 product, a lot of people are satisfied
 22 with the product. Some people, as you
 23 have here, people are satisfied; some
 24 people are not satisfied. So, we have
 25 both here.

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1 BY MR. KOPEL:
 2 Q My question was: Did you or
 3 anyone else at either Emson or Van Hauser do
 4 anything to address the fact that so many
 5 consumers were dissatisfied with the product?
 6 MR. WING: Same objection.
 7 THE WITNESS: Well, you're
 8 showing this to me now. So what I
 9 said, from time to time I looked at
 10 the site, and we -- you know, we have
 11 our product. We did the independent
 12 testing. And we -- you know, we go
 13 forward accordingly.
 14 BY MR. KOPEL:
 15 Q Mr. Mishan, I'm going to ask you
 16 to please try to focus carefully on what my
 17 question was and answer that question.
 18 A I'll do the best I can.
 19 MR. KOPEL: Can you please read
 20 back the question?
 21 (Thereupon, the record was read
 22 back by the reporter as recorded
 23 above.)
 24 THE WITNESS: You are saying so
 25 many, it's relative. I mean, did we

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1 do what? What's his question?
 2 I told you, it's relative. You
 3 have -- many people have -- so what's
 4 his question? He wants to know did we
 5 address what?
 6 MR. WING: She can't interpret
 7 his question.
 8 THE WITNESS: I can't
 9 interpret. I can't interpret. You
 10 know, it's vague. It's too vague for me.
 11 BY MR. KOPEL:
 12 Q Okay. Do you see here -- this is
 13 a yes or no question. Do you see that 55
 14 percent of reviewers gave the product either
 15 one star or two stars? Do you see that?
 16 A I see that. I see 45 percent
 17 gave five, four and three.
 18 Q Okay. And so would you agree
 19 that 55 percent of 441 is approximately 243?
 20 A I don't know. I don't have my
 21 calculator like you just calculated.
 22 Whatever quantities, 55 percent of 441, and
 23 then you have 45 percent of 441 is the other
 24 figure. You have a calculator, I don't.
 25 Q The question is -- and you

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1 visited this site before and read the
 2 reviews, correct?
 3 MR. WING: Object to form,
 4 misstates his testimony.
 5 THE WITNESS: You asked the
 6 question. Sorry?
 7 MR. WING: I was just objecting.
 8 THE WITNESS: You asked me, I
 9 said I looked, I've gone through it
 10 from time to time. And you asked me
 11 if I read reviews from time to time, and I've
 12 read a few reviews here and there.
 13 BY MR. KOPEL:
 14 Q Did anyone at the company do
 15 anything to address the negative reviews?
 16 A As I mentioned --
 17 Q Yes or no.
 18 A Who says where -- you're saying
 19 of the negative reviews that you've printed
 20 out. When was it printed out? I don't
 21 know. I don't know when it was printed out.
 22 There's no date on it, so --
 23 Q The document was printed out this
 24 morning. I can represent that to you.
 25 A Okay. So you asked me if anyone

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<p>1 did anything to address reviews that you 2 printed out this morning? 3 Q Do you see that the first review 4 is from November 17, 2010? 5 A I see that, yes. 6 Q And it says that's one star, 7 "defective or fraudulent or both," correct? 8 A Yes. I'd say also you have other 9 reviews that are -- most of them are probably very, 10 very early, too, and positive. 11 Q Do you see the second review is 12 from August 21, 2010, one star, Bell + Howell 13 animal repeller, bad news? Do you see that? 14 A I see that. But as I mentioned, 15 you only printed one page. Print out all 441. 16 Q Do you see the third review is 17 one star, save your money, on August 20, 18 2010? Do you see that? 19 A Yes, I see that. It's not a 20 problem. Let me see also all the positive 21 reviews. That's what I mean by not a problem. 22 You're printing out and you asked 23 me questions on the negative. Show me the 24 positive. Show me the whole picture. 25 Q The question is very simple.</p> <p style="text-align: right;">Page 122</p>	<p>1 You have also 45 percent that said it 2 was positive. So, I don't know. 3 BY MR. KOPEL: 4 Q You can set that aside. 5 MR. KOPEL: I am going to ask 6 the court reporter to mark as Exhibit 7 Number 8 document bearing Bates 8 numbers BHH LLC.000308 to 330. 9 (Thereupon, the Document 10 bearing Bates numbers BHH LLC.000308 11 to 330 was marked Deposition Exhibit 8 12 for Identification, as of this date.) 13 BY MR. KOPEL: 14 Q Mr. Mishan, do you have Exhibit 15 Number 8? 16 A Yes. 17 Q Have you seen it before? 18 A Yes. 19 Q What is it? 20 A Looks like a report of sales. 21 Q Sales of what? 22 A Of the 50105. 23 Q Does that refer solely to sales 24 of the Bell + Howell ultrasonic pest repellers with 25 the outlet and the light?</p> <p style="text-align: right;">Page 124</p>
<p>1 Did anyone at any of the 2 companies do anything to address the 3 negative reviews? If the answer is no, that 4 is fine. 5 A I don't know whether we got -- I 6 don't know if when they saw this or they saw 7 it or whatnot, that they would start addressing or 8 whatnot, so... 9 Q So, to your knowledge, no one did 10 anything to address anything, correct? 11 A Like I stated, I don't know 12 what -- to the point that they saw it to 13 address it, to make a comment. So that's my 14 answer. So that's the best way I can answer 15 the question to the best of my ability. 16 Q Do you have any hypothesis or 17 explanation for why so many people had bad 18 experiences with the product? 19 MR. WING: Object to form. 20 THE WITNESS: I don't know 21 how -- they way they use the product. 22 I don't know if they used it appropriately, 23 I don't know if they used it correctly. 24 I know over here you have -- 25 and these are reviews that are relative.</p> <p style="text-align: right;">Page 123</p>	<p>1 A Correct. 2 Q And it does not include any sales 3 regarding other varieties of the Bell + Howell 4 ultrasonic pest repellers, correct? 5 A Correct. 6 Q Who prepared this document? 7 A I believe the computer department. 8 Q Was this document produced as the 9 information is kept in the ordinary course of 10 business, or was it prepared for litigation purposes? 11 A I believe if you ask for, you 12 know, sales here for the product for a 13 certain period of time to another period of 14 time, I believe it would be produced as such. 15 Q To your knowledge, are all the 16 parties to whom either Emson or Van Hauser 17 sold these units, are all those entities listed in 18 this document? 19 A From what I see, looks like it. 20 Q To your knowledge, are there any 21 sales of these units made between June 20th, 22 2011, and November 6th, 2015, that are not 23 in this document? 24 A I'm sorry, what was -- I'm not 25 understanding the question. I'm sorry.</p> <p style="text-align: right;">Page 125</p>

<p>1 Q That's fine.</p> <p>2 MR. KOPEL: Can you repeat</p> <p>3 that, please?</p> <p>4 (Thereupon, the record was read</p> <p>5 back by the reporter as recorded</p> <p>6 above.)</p> <p>7 THE WITNESS: I believe this is</p> <p>8 complete.</p> <p>9 BY MR. KOPEL:</p> <p>10 Q Does BHH, Emson or Van Hauser,</p> <p>11 collect any data regarding retail sales of</p> <p>12 the ultrasonic pest repellers?</p> <p>13 A What do you mean when you're</p> <p>14 saying retail sales? Are you meaning sales</p> <p>15 by the retailer?</p> <p>16 Q Correct.</p> <p>17 A Not from my knowledge.</p> <p>18 Q Do they utilize any data from</p> <p>19 either IRI or Nielsen, for example?</p> <p>20 A That I don't know.</p> <p>21 Q Who would know the answer to that</p> <p>22 question?</p> <p>23 A I'm not -- I have heard of Nielsen.</p> <p>24 Nielsen?</p> <p>25 Q Nielsen --</p> <p style="text-align: right;">Page 126</p>	<p>1 A Yes.</p> <p>2 Q Do you know whether this page was</p> <p>3 prepared for litigation purposes?</p> <p>4 A I believe it was.</p> <p>5 Q Do you know specifically who</p> <p>6 prepared this page?</p> <p>7 A I think the computer department.</p> <p>8 Q Do you know who in the computer</p> <p>9 department prepared this page?</p> <p>10 A I don't know if it was -- it</p> <p>11 could have been either a person from the</p> <p>12 computer department or just maybe one of the</p> <p>13 secretaries who took the numbers here and</p> <p>14 "cumed" them, cumulative.</p> <p>15 Q Did you instruct them to do so?</p> <p>16 A They did it on -- I'm not sure.</p> <p>17 Maybe -- maybe Eddie did, so we have it all</p> <p>18 on one sheet.</p> <p>19 Q Was June 20th, 2011, the first</p> <p>20 date on which these units were sold?</p> <p>21 A I'm not sure, but I believe. I</p> <p>22 believe so. I'm not sure, but I believe so.</p> <p>23 Q Was this sheet prepared on</p> <p>24 November 6th of 2015?</p> <p>25 A I don't know exactly what date.</p> <p style="text-align: right;">Page 128</p>
<p>1 A Nielsen, I heard of Nielsen</p> <p>2 ratings. And what's the other one?</p> <p>3 Q IRI.</p> <p>4 A I don't even know who IRI. What</p> <p>5 does that stand for? I don't even know what it is.</p> <p>6 Q Information Research, Inc.</p> <p>7 A Okay.</p> <p>8 Q Who would know the answer to that</p> <p>9 question?</p> <p>10 A So your question is, were we --</p> <p>11 what are IRI, initials, or Nielsen, what?</p> <p>12 What's the question? I'm sorry, repeat the</p> <p>13 question.</p> <p>14 Q That's fine.</p> <p>15 To your knowledge, does either</p> <p>16 BHH, Emson or Van Hauser utilize data for</p> <p>17 retail sales from data aggregation companies</p> <p>18 such as IRI or Nielsen?</p> <p>19 A I'm not sure.</p> <p>20 Q Who would know the answer to that</p> <p>21 question?</p> <p>22 A Maybe Eddie or Steven.</p> <p>23 Q I would like to refer you to the</p> <p>24 last page of this document, please, at page</p> <p>25 bears the Bates number BHH LLC.000330.</p> <p style="text-align: right;">Page 127</p>	<p>1 I mean, it says here printed November 6th,</p> <p>2 2015. So, if she prepared this paper that</p> <p>3 same day or the next day, because they're</p> <p>4 busy, could be all around that time period.</p> <p>5 Q I'm sorry, could you refer me to</p> <p>6 where you're reading that it says printed on</p> <p>7 November 6th, 2015?</p> <p>8 A 329, document 329.</p> <p>9 Q Okay. But that's not listed on</p> <p>10 the last page of the document, right?</p> <p>11 A No, but it says sales from</p> <p>12 June 20th, 2011, through November 6th, 2015.</p> <p>13 So, it looks like she coordinated -- when</p> <p>14 she gave a cumulative, she coordinated from</p> <p>15 the reports and put that information into</p> <p>16 one summary page.</p> <p>17 Q Now, on page 330, the last page</p> <p>18 of this document, there is a column that is</p> <p>19 titled DIV. What does DIV stand for?</p> <p>20 A I think division.</p> <p>21 Q Okay. And does VA stand for Van</p> <p>22 Hauser?</p> <p>23 A Yes.</p> <p>24 Q And EM stands for Emson?</p> <p>25 A Yes. They use the term in a</p> <p style="text-align: right;">Page 129</p>

1 division, even if it's a separate entity, but just
 2 on this computer that's the way they have it. Like
 3 it says DV throughout the other documents.
 4 Q Does the accounting department
 5 from Van Hauser do the books for both BHH
 6 and Emson?
 7 A Accounting department for Van --
 8 accounting department has to keep each
 9 company separate. Van Hauser, Emson, BHH,
 10 we explained before was, you know, a
 11 licensing, whatever, or authorizing that,
 12 authorizing, given permission to use the
 13 Bell + Howell brand.
 14 Q And it's the same department that
 15 does the books for all three companies, right?
 16 A I believe so.
 17 Q And the department is employed by
 18 Van Hauser, correct?
 19 A No. The department, as I
 20 mentioned before you asked, was -- employer
 21 is really Emson, and then you have how many
 22 times Van Hauser would use Emson employees.
 23 Q Okay. But Emson is the one who
 24 pays their paychecks, correct?
 25 A Emson would pay the paychecks to

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1 the employees.
 2 Q Does either Van Hauser or BHH pay
 3 money to Emson on account of its accountants
 4 doing their books?
 5 A Sorry, say it again. I'm sorry,
 6 repeat that.
 7 Q Does either BHH or Van Hauser pay
 8 money to Emson as payment for Emson's
 9 accountants doing their books for them?
 10 A Well, it's not accountants. It's
 11 employees of Emson. I'm not sure my
 12 brothers -- my brothers, Eddie and Steven,
 13 will get involved if there is any, you know,
 14 usage of, you know, for of the Emson
 15 employees, you know, for Van -- for work
 16 done for Van Hauser, if there's any
 17 compensation. You asked me that before.
 18 Q Well, I'm referring solely to the
 19 accounting services now. So, you are saying --
 20 A I don't know. It could be if
 21 they're employed, it could be that there's -- you
 22 know, that Emson would -- you know, Van
 23 Hauser using the employees. It could be.
 24 I'm not sure. Could be in the accounting,
 25 the accounting department.

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1 Q Do the three entities maintain
 2 distinct bank accounts?
 3 A I believe so.
 4 Q Do any of the entities ever make
 5 loans to any of the other entities?
 6 A Could be, but I don't get involved in
 7 that.
 8 Q Who would know that?
 9 A More Eddie or Steven.
 10 Q How do returns come back to
 11 either Van Hauser or Emson?
 12 A I think they would return it
 13 to -- maybe they would return it to the
 14 store, and then the stores would return it
 15 back to Emson or Van Hauser, depending what
 16 you -- as we described, the Van Hauser,
 17 Emson, we described that before. So, the
 18 returns would be going back in the same
 19 fashion, Emson product or whatever, Emson
 20 billing or Van Hauser billing.
 21 Q Do any of the returns come from
 22 individual consumers?
 23 A I believe that the majority is from
 24 retailers, but they could be also -- also from
 25 consumers, could be.

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1 I mean, this document I'm seeing
 2 here, this is usually a -- you know, usually
 3 the consumer would say they bought it from
 4 XYZ retailer, they would, in turn, return it
 5 back to XYZ retailer, and the XYZ retailer
 6 would send back product to Emson and Van
 7 Hauser like we described.
 8 Q To your knowledge, have any
 9 individual consumers ever returned products
 10 directly to Emson or Van Hauser?
 11 A Maybe for TV orders, because they
 12 would return it -- you know, those are more
 13 direct consumer sales, so therefore they
 14 would return back the product to -- you
 15 know, to that entity; as compared to when
 16 you sell to a retailer, the consumer
 17 would -- if you bought a product from a
 18 retailer, you would usually send it back to
 19 the retailer, and the retailer would then,
 20 in turn, send it back to the distributor of
 21 that product.
 22 Q I want to clarify something. Are
 23 there -- and we will take a break very shortly.
 24 MR. WING: No, no, I've got --
 25 I want to ask a quick question. This

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1 is the ultrasonic, just so we are clear.
 2 THE WITNESS: Oh, yeah, yeah,
 3 yeah. So we're clear, yeah. So this,
 4 actually, there was no TV on this. So
 5 I'm just thinking about the other
 6 product. Thank you for the clarity.
 7 This, I would say, they would
 8 return back from -- as I say, would
 9 return back to the retailer, and the
 10 retailer, in turn, returns it back to us.
 11 BY MR. KOPEL:
 12 Q Do you know if anyone looked
 13 into, for purposes of the litigation, whether there
 14 are any documents or communications
 15 regarding individual -- refunds given to
 16 individual consumers or complaints made by
 17 individual consumers to either Emson or Van
 18 Hauser?
 19 A Too long of a question. Please
 20 repeat which points you want to really focus on.
 21 Q Sure.
 22 A Go ahead.
 23 Q Do you know whether anyone
 24 searched for documents or communications
 25 evidencing any refunds paid to individual

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1 consumers by either Emson or Van Hauser?
 2 A I don't know if there were
 3 individual -- you know, pest repellers, just
 4 because I mentioned they go back to the
 5 retailers, the retailers would, in turn,
 6 send it to us. So I don't know if there's
 7 any individual -- I don't know if there's
 8 anything to research on that regard.
 9 Q Do you know whether anyone looked
 10 into whether or not there were consumer complaints
 11 made from individual consumers regarding
 12 this product to either Emson or Van Hauser?
 13 A Has anyone looked into? I don't
 14 know -- what do you mean, looked into? Looked into
 15 what? Looked into that we got -- that you're saying
 16 we allegedly received complaints? As I mentioned,
 17 they returned it back to the store. The store, in
 18 turn, returns it back to us.
 19 Q Okay. So, to clarify, I mean
 20 looked into searched for communications or
 21 documents for purposes of this litigation.
 22 Has anyone done that to see whether or not
 23 there have been complaints made by
 24 individuals regarding this product to either
 25 Emson or Van Hauser?

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1 A We have -- we have what's
 2 provided over here in regards to, you know,
 3 the returns. I mean, I'm not sure what else
 4 you're referring to.

5 MR. KOPEL: Let's go off the
 6 record, please.

7 (Thereupon, a discussion was
 8 held off the record.)

9 MR. KOPEL: I'd like to ask the
 10 court reporter to mark as Exhibit 9
 11 document bearing Bates numbers BHH
 12 LLC.000331 to 361.

13 (Thereupon, the Document
 14 bearing Bates numbers BHH LLC.000331
 15 to 361 was marked Deposition Exhibit 9
 16 for Identification, as of this date.)

17 BY MR. KOPEL:

18 Q Mr. Mishan, do you have Exhibit
 19 Number 9?

20 A Yes.

21 Q Have you seen it before?

22 A Yes.

23 Q What is it?

24 A Sales report for 50104.

25 Q That's referring to solar animal

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1 repellers, correct?

2 A Yes.

3 Q Okay. Which variety of solar
 4 animal repellers does that refer to?

5 A The 30 foot.

6 Q This doesn't include any sales
 7 regarding 50 feet or 70 feet strobe light
 8 model, any nonsolar models, correct?

9 A Correct.

10 Q This is not including direct
 11 sales, correct?

12 A Do you mean direct sales to
 13 consumers?

14 Q Correct.

15 A Correct.

16 Q Who prepared this document?

17 A Can't we just say the same like
 18 we said before? It's up to you.

19 Q Please answer my question.

20 A Oh, computer department.

21 Q Please turn to the last page of
 22 the document bearing Bates number BHH
 23 LLC.000362.

24 A Uh-huh.

25 Q Do you see at the top it says

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35 (Pages 134 - 137)

<p>1 Bell + Howell ultrasonic pest repeller returns?</p> <p>2 A Yes.</p> <p>3 Q Is that correct, or is this</p> <p>4 referring to animal repeller returns?</p> <p>5 A Animal repeller. She typed</p> <p>6 incorrectly the description. She wrote</p> <p>7 animal repeller.</p> <p>8 Q On the bottom half of the page it</p> <p>9 says Bell + Howell ultrasonic pest repeller</p> <p>10 sales; that should also read animal</p> <p>11 repeller, correct?</p> <p>12 A That's correct.</p> <p>13 Q Now, why -- who makes direct</p> <p>14 sales of the animal repellers? Does Emson</p> <p>15 make it or Van Hauser or both?</p> <p>16 A When you're saying direct</p> <p>17 sales meaning?</p> <p>18 Q To consumers.</p> <p>19 A To consumers. Well, it would be</p> <p>20 under Van Hauser, but -- I would assume it</p> <p>21 is under Van Hauser.</p> <p>22 Q Has Van Hauser received returns</p> <p>23 of the direct sales, units sold by direct sales?</p> <p>24 A Well, the fulfillment house would</p> <p>25 receive returns and it could be returns of</p> <p style="text-align: right;">Page 138</p>	<p>1 Q Does the money paid from the</p> <p>2 direct sales, does that first go to the fulfillment</p> <p>3 house before it reaches Van Hauser?</p> <p>4 A I don't know if it goes through a</p> <p>5 payment company. I don't know if -- I don't</p> <p>6 know exactly. They would call the telephone</p> <p>7 number and they would give their credit card</p> <p>8 number over the phone, and then I don't know</p> <p>9 if the fulfillment house takes the money or</p> <p>10 whatever, processes the payment, or a payment</p> <p>11 processor could be another third party.</p> <p>12 Q Does Van Hauser ship units to the</p> <p>13 fulfillment house as they're ordered or do</p> <p>14 they send them in regular quantities?</p> <p>15 A They would ship merchandise.</p> <p>16 Merchandise would be purchased from</p> <p>17 overseas, received in the warehouse, in the</p> <p>18 fulfillment house, and they, in turn, would</p> <p>19 ship -- for those orders referring to direct</p> <p>20 sales would ship to individual consumers.</p> <p>21 Q Does Van Hauser have its own</p> <p>22 warehouses?</p> <p>23 A No.</p> <p>24 Q Who owns the warehouses?</p> <p>25 A Third party.</p> <p style="text-align: right;">Page 140</p>
<p>1 many times unopened packages or whatnot.</p> <p>2 Q So, when we say direct sales to</p> <p>3 consumers, it's not really direct, because</p> <p>4 there's a fulfillment house, correct?</p> <p>5 A It's direct sales to consumers</p> <p>6 because it is shipped directly to consumers.</p> <p>7 Q So what role does the fulfillment</p> <p>8 house play in these sales?</p> <p>9 A They fulfill direct sales to the</p> <p>10 consumer.</p> <p>11 Q Who makes the actual direct sales</p> <p>12 to consumers? Does Van Hauser make them?</p> <p>13 MR. WING: Object to form.</p> <p>14 THE WITNESS: Well, examples is</p> <p>15 TV commercial, and consumers would</p> <p>16 purchase and merchandise would be</p> <p>17 shipped to them.</p> <p>18 BY MR. KOPEL:</p> <p>19 Q Who do they pay the money to?</p> <p>20 MR. WING: Object to form. At</p> <p>21 what point?</p> <p>22 THE WITNESS: I don't --</p> <p>23 eventually get to Van Hauser, but I</p> <p>24 don't know. Call the telephone number, so...</p> <p>25 BY MR. KOPEL:</p> <p style="text-align: right;">Page 139</p>	<p>1 Q Who is the third party?</p> <p>2 A Well, you have -- Fosdick is one</p> <p>3 of the fulfillment houses that we use.</p> <p>4 Q Please spell that.</p> <p>5 A F-O-S-D-I, I think it's D-I-C-K.</p> <p>6 Q Anyone else?</p> <p>7 A That's for direct sales. I</p> <p>8 believe that's it.</p> <p>9 Q What about for the other sales?</p> <p>10 A I believe different warehouses.</p> <p>11 Q Who owns those warehouses?</p> <p>12 A Those individual entities own</p> <p>13 their own, their own warehouses.</p> <p>14 Q Are the animal repellents stored</p> <p>15 at the same locations as the pest repellents?</p> <p>16 A I believe the warehouses where we</p> <p>17 store for the nondirect sales that are</p> <p>18 shipping to retailers, et cetera, I believe</p> <p>19 that's usually one warehouse location. And</p> <p>20 then Fosdick won't do direct sales, but</p> <p>21 sometimes from time to time you could have</p> <p>22 Fosdick also doing shipping to the direct</p> <p>23 sales or shipping to a retailer, so it could</p> <p>24 be both.</p> <p>25 Q In the course of direct sales,</p> <p style="text-align: right;">Page 141</p>

1 does Van Hauser have any direct transactions
 2 either to or from individual consumers?
 3 A Sorry, say it again.
 4 Q In the course of the direct sales
 5 of the animal repellers, does Van Hauser
 6 have any transactions either to or from
 7 individual consumers?
 8 A No. As I mentioned, they would
 9 call via a telephone number, then they get
 10 the orders, and then they would transmit the
 11 orders to Fosdick, and then Fosdick would
 12 ship to individual consumers, so it's -- that's the
 13 train.
 14 Q Do the telephone operators work
 15 for Fosdick?
 16 A No. I believe it's a separate
 17 third party.
 18 Q Do you know if they have scripts
 19 from which they read when they are speaking
 20 to consumers?
 21 A They probably do.
 22 Q Do you know if you or anyone else
 23 from Van Hauser has ever been sent copies of
 24 these scripts?
 25 A Not myself.

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1 Q Do you know whether they have
 2 been sent to anyone else at Van Hauser?
 3 A I don't know. Maybe Eddie, he's
 4 involved in TV, direct sales.
 5 Q Do you know if he would have had
 6 any role in the writing of these scripts?
 7 A I believe the telemarketers,
 8 people taking phone calls, I believe they
 9 write scripts.
 10 Q Does Van Hauser have a list of
 11 individual consumers who purchased animal
 12 repellers through direct sales?
 13 A I believe that the telemarketers
 14 and the fulfillment house has the, you know,
 15 individual consumers that purchase.
 16 Q So that information was never
 17 given to Van Hauser?
 18 A I don't know.
 19 Q Who knows?
 20 A Maybe Eddie, but I think it's
 21 more the process is that they take the phone
 22 call, as I mentioned, and fulfillment is
 23 done by a fulfillment house.
 24 Q Even the returns made through
 25 direct sales are still made through the

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1 fulfillment house and not directly to Van
 2 Hauser, correct?
 3 A Yes, correct. That's what I
 4 believe.
 5 Q The date range reflected in this
 6 document, Exhibit Number 9, begins on June
 7 20th of 2011, correct?
 8 A Yes.
 9 Q Is that the date these units were
 10 first sold?
 11 A You asked me that before. I'm
 12 not sure. May have been sold before, as
 13 well. I'm not sure.
 14 Q I asked you before with regards
 15 to the best repellers, right?
 16 A Yeah, but you asked me also
 17 before originally in regard to animal
 18 repellers, too.
 19 Q Who chose this date to be the
 20 starting range for this document?
 21 A That's what my attorney mentioned
 22 to me, that the date that was the -- I
 23 forget the terminology used, the class date.
 24 I don't recall what it is.
 25 Q Okay, thanks. You can set that

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1 aside.
 2 A Okay. Do you mind? I just want
 3 to check, because someone is dingling me a lot.
 4 MR. KOPEL: Let's go off the
 5 record for a minute.
 6 (Thereupon, a discussion was
 7 held off the record.)
 8 MR. KOPEL: I would like to ask
 9 the court reporter to please mark as
 10 Exhibit Number 10 document bearing
 11 Bates number BHH LLC.000363.
 12 (Thereupon, the Document
 13 bearing Bates numbers BHH LLC.000331
 14 to 361 was marked Deposition
 15 Exhibit 10 for Identification, as of
 16 this date.)
 17 BY MR. KOPEL:
 18 Q Mr. Emson, do you have Exhibit
 19 Number 10?
 20 A Yes.
 21 Q Have you seen it before?
 22 A Yes.
 23 Q What is it?
 24 A Looks like a -- this is a
 25 document regarding the direct sales.

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37 (Pages 142 - 145)

1 Q Direct sales of what?
2 A The animal -- the solar animal
3 repeller.
4 Q Does this document reflect direct
5 sales of all models for the solar animal
6 repeller or is it limited only to one model?
7 A This is -- from my understanding,
8 it's limited to the 50104, the one model,
9 from my understanding.
10 Q Is that reflected anywhere in
11 this document?
12 A It says animal repeller, but she
13 just titled it like that, but it's -- this is --
14 would be for the solar animal repeller.
15 Q When you say "she," who do you
16 mean?
17 A I am guessing Eddie's assistant,
18 like I mentioned -- I believe I mentioned
19 before, one of the people when they do a
20 document as such.
21 Q What's her name?
22 A I think her name is Shermattie,
23 S-H-E-R-M-A-T-T-I-E.
24 Q Who asked her to prepare this document?
25 A I believe Eddie.

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1 Q When was this document prepared?
2 A Looks like around that date or
3 subsequent to the date of November 6th time period.
4 Q Are you familiar with the website
5 BellHowellPestRepeller.com?
6 A BellHowellPestRepeller.com? I
7 remember there was another entity that
8 wasn't us. Maybe that's the one.
9 Q And what do you mean by that?
10 A Exactly what I said.
11 Q There's another entity that --
12 A Not us.
13 No. In other words, someone
14 could have a site Bell + Howell pest
15 repeller, so I don't think that's us.
16 Q The direct sales are all taken
17 over the phone, is that correct?
18 A I believe taken over the phone.
19 I don't know, maybe some people might, you
20 know, mail in something, you never know, if
21 they don't want to give their -- if they
22 don't want to do it over the phone, they may
23 want to send it in the mail. But I think --
24 well, actually, maybe from the phone. I
25 don't know. Maybe from a website. I don't

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1 know.
2 Q Well, that was my question.
3 Do you know if the direct sales
4 are made through a website?
5 A I think this is, from my
6 understanding, is a combination of whether
7 by phone or by website.
8 Q What's the website?
9 A I think it's -- it's either BH
10 Animal -- I don't know if it's AnimalRepeller.com.
11 I think we had AnimalOff, because it's just
12 easy for people to remember.
13 Q Dot-com?
14 A Yeah, I believe so.
15 Q Who drafted the content that's on
16 those websites?
17 A I think the company who does like
18 third party that does websites.
19 Q Did they run it by anybody at Van
20 Hauser before it was posted?
21 A I don't know. Maybe Eddie. I
22 don't know.
23 Q What's the name of the company
24 that does sales by website?
25 A I'm not sure for this product.

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1 I'm not sure.
2 Q Does the same website also offer
3 pest repellers for sale?
4 A No, we don't. No, we don't, no.
5 Q Why are animal repellers offered
6 for sale, but not pest repellers, directly to
7 consumers?
8 A Because we made a TV commercial
9 for animal repellers or had it produced for
10 solar animal repellers.
11 Q Okay. Why wasn't a TV commercial
12 made for pest repellers?
13 A I don't have to make a TV
14 commercial on every item.
15 MR. KOPEL: I'll ask the court
16 reporter to please mark as Exhibit 11
17 a document bearing Bates number BHH
18 LLC.000364 to 379.
19 (Thereupon, the Document
20 bearing Bates number BHH LLC.000364 to
21 379 was marked Deposition Exhibit 11
22 for Identification, as of this date.)
23 BY MR. KOPEL:
24 Q Mr. Mishan, do you have Exhibit
25 Number 11?

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1 A Yes.
2 Q Have you seen it before?
3 A Can I look through the whole thing?
4 Q Take your time.
5 A Do you want me to read the whole
6 thing?
7 Q No. My only question is: Have
8 you seen this document before?
9 A Yes.
10 Q What is it?
11 A It's a third-party testing report
12 from CTS for the solar animal repeller.
13 Q Who commissioned this test?
14 A Intellitec.
15 Q Who paid for this test?
16 A Intellitec.
17 Q Did Intellitec discuss the
18 commissioning of this test with you or
19 anybody else at BHH, Van Hauser or Emson?
20 A Yes.
21 Q Was it discussed before the test
22 was commissioned?
23 A Yes.
24 Q When was that?
25 A I don't remember exactly.

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1 Q Who was a party to these
2 conversations?
3 A Just me and Debbie from Intellitec.
4 Q Were these conversations had over
5 the phone?
6 A Yes.
7 Q Were there any communications by
8 e-mail regarding this topic?
9 A Not that I recall.
10 Q What did you discuss?
11 A To do additional testing on the
12 solar animal repeller.
13 Q Why did you think additional
14 testing was needed?
15 A Additional testing is always good
16 to do, same way I have two testings on the
17 pest repeller.
18 Q Did you test any other version of
19 the solar animal repeller other than 50104?
20 A Not that I know of. Maybe. I
21 don't know.
22 Q Did you discuss the litigation
23 with Debbie?
24 A I'm trying to remember. Don't
25 know the details.

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1 Q Did the litigation play a role in
2 your decision to suggest the commission of
3 this test?
4 A We always like to get additional
5 testing. Like I have two tests on the other
6 product, so I have two tests on this. Maybe
7 we will get more testing also.
8 Q So, is that a yes or a no?
9 A Additional testing. I don't know
10 how to answer the question. Additional
11 testing, to have additional testing on the
12 pest repeller. It's always good to have
13 additional testing, no?
14 Q Is Intellitec indemnifying BHH,
15 Van Hauser or Emson, for litigation costs or
16 any judgment or settlement in this action?
17 A No.
18 Q Who spoke with Jason Lee?
19 I will direct you, on page one of
20 15 here it says -- by address, it says
21 contact Jason Lee.
22 A I guess, I believe, it looks like
23 he works for Debbie.
24 Q Is Debbie located in China?
25 A She has locations actually in the

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1 United States and China.
2 Q Do you know what Mr. Lee's
3 position is?
4 A No. Looks like she works for
5 him -- that he works for her, sorry.
6 Q Who decided what the protocol
7 would be for this test?
8 A Could have been CTS, it could
9 have been Intellitec.
10 Q Did you play any role in determining
11 what the protocol would be?
12 A No. She just says sometimes, you
13 know, you have all the different animals, so
14 they have to get -- you know, hard to get
15 the animals, go find a skunk.
16 Q We'll get to that in a minute.
17 A All right.
18 Q I'm still on page one.
19 Did you discuss the protocol of
20 this test with Debbie before it was run?
21 A All I told her is, you know,
22 let's try to get -- yeah, she needed to get
23 representations with either squirrel,
24 rabbit, et cetera. So if that's considered
25 discussions, yeah, there were discussions.

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1 Q Do you see on the first page it
2 says "tested by Kate"?
3 A No.
4 Q Bottom of page one of 15, there
5 are three signatures, and on the --
6 A Tested by Kate, reviewed by
7 somebody else and approved by another
8 person. Now, that's the engineer. I don't
9 know. Maybe she has whole team. I don't
10 know.
11 Q Do you know who Kate is?
12 A No.
13 Q Do you know what her last name is?
14 A No.
15 Q Do you know what her qualifications are?
16 A It says engineer here. You can
17 look up CTS and see their qualification.
18 Q Okay. So, do you know what
19 Kate's qualifications are?
20 A It says here engineer.
21 Q Beyond the fact that her title is
22 engineer, do you know anything else about
23 her qualifications?
24 A No. We work with -- no, I didn't
25 commission -- Intellitec commissioned with

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1 CTS, which is an independent third-party
2 lab, that they have their people that work
3 for them.
4 Q And can you read the names of the
5 supervisor or deputy manager?
6 A Well, one says Kate, the other
7 one says -- looks like -- I'm not sure. I can't read
8 their script. The other one looks like maybe it says
9 Tim Young. But there's an engineer, supervisor,
10 deputy manager. It looks like they all work
11 for CTS, a company, a third-party independent lab.
12 Q Where did CTS get these animals
13 from?
14 A That I do not know. You could
15 ask them.
16 Looks like there's pictures of
17 animals here.
18 Q They might have been domesticated
19 animals, right?
20 MR. WING: Object to form.
21 THE WITNESS: I don't know. Do
22 you have a domesticated squirrel?
23 Never heard of a domesticated
24 squirrel. Rabbit could be. Skunk, I
25 don't know anyone, people whose has

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1 domesticated skunks. Rat? I don't
2 think so. Raccoon, pretty dangerous.
3 So, I don't know. Domestic,
4 you know, there's wild animals, there's
5 domesticated. Stray dog? Well...
6 BY MR. KOPEL:
7 Q Are you done with your --
8 A Let me see.
9 Q I don't want to cut you off.
10 A No, that's fine.
11 Deer? I don't know anyone who
12 had deer, so I don't know if these are -- if
13 any of these are really, you know, domesticated,
14 but they -- maybe they got them from zoos.
15 I think that's the way they do it.
16 Q Do you see any indication here in
17 this report of where these animals came from
18 and whether or not they were wild or captive
19 animals?
20 A I can't tell from here. If it
21 repels, it repels. Whether it was a caged
22 animal or was a -- one that you grab from
23 the wild. I'm not understanding what your
24 question is, I'm sorry.
25 Q My question is simply: Can you

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1 tell from the report any indication whether
2 these animals were wild or captive?
3 A Wild or captive?
4 Q Yes.
5 A No, I can't tell.
6 Q Would you agree that captive
7 animals sometimes show different behavior
8 characteristics than wild animals do?
9 A I don't know.
10 MR. WING: Object to the form,
11 foundation.
12 THE WITNESS: I don't know.
13 Maybe it's -- maybe they're more
14 comfortable, so if they get repelled
15 it's even better. I don't know.
16 BY MR. KOPEL:
17 Q So, you don't know if they --
18 wild animals tend to behave the same or
19 different as captive animals, right?
20 MR. WING: Same objection.
21 THE WITNESS: That I don't know.
22 As I said, maybe the captive
23 ones are more comfortable, so if
24 they're repelled it's even better.
25 BY MR. KOPEL:

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<p>1 Q Please turn to page three of 15. 2 What does this diagram show? 3 A Looks like showing the repeller 4 and you have -- it shows amount of feet. 5 It's an illustration, motion sensor coverage. 6 Q Were these animals placed into an 7 enclosed area of 70 feet by 70 feet? 8 A I didn't study this report, you 9 know, after to know that. I'm looking at the 10 pictures. It maybe somewhat looks like that. 11 I don't know. I can't tell. I'm 12 not sure if it's enclosed. I really can't tell. 13 Q Can you explain to me how this 14 experiment was done in regards to each animal? 15 A I don't know. Let's read it 16 together. It says they placed the sample of 17 the 50104 -- oh, I'm sorry. I'm going to 18 read the test method here. 19 Q Please just identify where you're 20 reading from. 21 A Two of 15. Placed -- test 22 method: "Placed a sample 50104 B & H solar 23 animal repeller on the stake. 24 Two, turn on the sample. 25 Three, recorded motion sensor</p> <p style="text-align: right;">Page 158</p>	<p>1 long they left the sample on for -- they 2 left the animal repeller on for each test? 3 A No, but I do see a consistency 4 of: stopped a while, then walked away; 5 looked shocked, then ran away; stopped a 6 while, then ran away. 7 Oh, I'm sorry. I'm seeing a 8 consistency, sorry. Stopped a while, then 9 walked away; looked shocked, then ran away; 10 stopped a while, then ran away, et cetera, 11 et cetera. That's what I'm seeing here. 12 I'm sorry. 13 Q Do you see any indication of 14 whether they studied if an animal approached 15 more than once or what an animal did for any 16 given length of time? 17 A I'm sorry, please say that again. 18 You want to know -- what's your question? 19 (Thereupon, the record was read 20 back by the reporter as recorded 21 above.) 22 THE WITNESS: It seems like 23 they -- from what I'm gathering here, 24 they turned it on, the animal is a 25 certain distance, and then went away,</p> <p style="text-align: right;">Page 160</p>
<p>1 coverage distance. 2 Four, watched reaction of animals 3 when the sensors scan the animals (speaker 4 work). 5 Five, record the reaction of the 6 animals and the distance from the sample to 7 animals." So, that's -- looks like the protocol. 8 Q Do you know whether each animal 9 was released by itself in the course of this 10 experiment into the area? 11 A What do you mean, released? I 12 mean, they had to measure, I guess, the 13 30 feet, so maybe they placed it there. 14 Q Was the device turned on? Do you 15 have any idea if the device was turned on 16 first or the animal was there first? 17 A It said place the sample on the 18 stake, turn on the sample. I don't know 19 what they did what -- what they did when, 20 but, from my understanding, maybe they 21 had -- they positioned the animal at the 22 distance, maybe they turned on -- turned it 23 on and then see what occurred with the 24 animal thereafter. That's my understanding. 25 Q Do you see any indication of how</p> <p style="text-align: right;">Page 159</p>	<p>1 walked away, ran away, et cetera. 2 BY MR. KOPEL: 3 Q So, it is your understanding that 4 what they did here was they turned on a 5 device and they let an animal approach at 6 one time, and then they saw how the animal 7 acted when it approached on that one occasion? 8 MR. WING: Object to form, 9 foundation. 10 THE WITNESS: I'm not sure if 11 it's one time, I'm not sure if it's several 12 times. I don't know. 13 BY MR. KOPEL: 14 Q Do you see any indication from 15 this test that proves that the device could 16 keep an animal away from an area for any 17 sustained length of time? 18 A Well, if it -- 19 MR. WING: Object to form, 20 foundation. 21 THE WITNESS: If it was there 22 and then it turned on at a certain 23 distance and it walked away or ran 24 away, it seems like it was bothering 25 them to leave.</p> <p style="text-align: right;">Page 161</p>

<p>1 BY MR. KOPEL: 2 Q But they never once record what 3 happens next, right? 4 MR. WING: Object to form. 5 THE WITNESS: I don't know. 6 Maybe they ran away. That's it. 7 BY MR. KOPEL: 8 Q Can you please describe what a 9 raccoon looks like when it's shocked? 10 MR. WING: Object to form, 11 foundation. 12 THE WITNESS: Let's see. Maybe 13 it looked like -- as a person looked 14 like he's in shock. Maybe it just 15 looked like it stopped in its tracks, 16 then walked away. That's what I would 17 interpret the word shocked. Would you? 18 BY MR. KOPEL: 19 Q Do you think humans are really 20 able to tell if a rat is shocked or scared? 21 MR. WING: Object to form. 22 THE WITNESS: You could ask CTS 23 that question. This is the way they -- they 24 analyzed it. 25 BY MR. KOPEL:</p> <p style="text-align: right;">Page 162</p>	<p>1 MR. WING: Object to form, 2 foundation. 3 THE WITNESS: Not that I see 4 here. 5 BY MR. KOPEL: 6 Q We don't know what the results 7 would have been like if they had simply put 8 a cardboard box there, do we? 9 A I don't know. Do you think 10 you're going to -- they all ran away and 11 they walked away, so now you want to know 12 it's all going to -- ran away or walk away 13 if you put a cardboard box? I don't know 14 what the likelihood of that is. 15 BY MR. KOPEL: 16 Q Was there any food present in 17 this test? 18 A I have to look. 19 MR. WING: Object to foundation. 20 THE WITNESS: It doesn't say. 21 BY MR. KOPEL: 22 Q So, this test does not show how 23 animals would react if there was an incentive to go 24 to a certain area such as food, correct? 25 A You're asking if they had --</p> <p style="text-align: right;">Page 164</p>
<p>1 Q What's the difference between a 2 shocked rat and a scared rat? 3 MR. WING: Object to form, 4 foundation. 5 THE WITNESS: I don't know. 6 Shocked, we could look it up, you 7 know, in the dictionary. Maybe 8 shocked means it sounds like it 9 stopped in its tracks and scared, 10 maybe it started to scurry and then 11 walked, that's what that would -- 12 maybe it means that. But I see a 13 consistency that they either ran away 14 or walked away or left. 15 BY MR. KOPEL: 16 Q Do you see any indication that a 17 control testing was done? 18 A The testing that I see is that 19 they had the animal at a certain distance, 20 they turned the solar animal repeller on and 21 then it ran away or walked away. And I see 22 consistently throughout every animal here. 23 Q They only ever tested with the 24 solar animal repeller; they never tested 25 with any other object, correct?</p> <p style="text-align: right;">Page 163</p>	<p>1 MR. WING: Object to 2 foundation. 3 THE WITNESS: -- food in an 4 area that it's going to go towards 5 there? You want to ask if there's a -- 6 it's a male rat and there's a female 7 rate on the side? I mean, I don't 8 understand the question. 9 BY MR. KOPEL: 10 Q Would you agree that one of the 11 uses many consumers purchased animal 12 repellers for is to keep animals away from 13 their gardens? 14 A Yes. 15 Q A reason for that is because they 16 don't want the animals eating their plants, right? 17 A Maybe they don't want them going 18 through the garbage; maybe they don't want 19 the animal near them. 20 Q When an animal goes through 21 garbage, it's usually looking for food, right? 22 A I think so. 23 Q Okay. Please look at pages eight 24 through 15 and let me know if you see any 25 indication that there was any food or plants</p> <p style="text-align: right;">Page 165</p>

1 at all in the testing area.
 2 A Not that I see. As I mentioned,
 3 they may just not want the animal around. I
 4 don't think people like skunks around or rats.
 5 Q Do you have Exhibit 5? Where is
 6 Exhibit 5? That's the packaging.
 7 MR. WING: Here.
 8 MR. KOPEL: Thank you, Scott.
 9 BY MR. KOPEL:
 10 Q Please look at page four of 15.
 11 A Okay.
 12 Q Do you see in the second entry it
 13 says raccoon looked shocked, then walked away?
 14 A Okay.
 15 Q See the next entry says raccoon
 16 looks scared, then ran away?
 17 A Okay.
 18 Q The next entry says the raccoon
 19 stopped a while and then walked away?
 20 A Okay.
 21 Q Do we have any indication of how
 22 long the raccoon stayed in the vicinity for
 23 any of these entries?
 24 A I don't know the amount of time.
 25 I don't see it here. They could be short,

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1 except for the last one says stopped a
 2 while; but the other one's shocked that
 3 walked away. Sounds quick to me. Looks
 4 scared, then ran away. Sounds quick to me.
 5 Stopped a few seconds before that, that
 6 tells me a few seconds, whatever.
 7 Q Do you know if these tests were
 8 recorded by video?
 9 A I don't know.
 10 Q Do you think it's a very
 11 scientific way to record things, to say that
 12 a rat looked shocked and walked away?
 13 MR. WING: Object to form.
 14 THE WITNESS: You could ask CTS.
 15 BY MR. KOPEL:
 16 Q Please look at page six of 15.
 17 Now, in the two charts here by the product
 18 description, there is parentheses after the
 19 product name that says super speaker. Do
 20 you see that?
 21 A Yes.
 22 Q And that's not present for any of
 23 the other tests, right?
 24 A Maybe it was just a typo.
 25 Q So, you don't know of any

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1 distinction between super speaker and any
 2 other type of product?
 3 A I don't know. I would think they
 4 would use the same throughout.
 5 Q Did counsel have any role in
 6 creating the protocol for those tests?
 7 A Who? Counsel?
 8 Q Yes.
 9 A No.
 10 Q Okay, thanks. You can put that
 11 aside.
 12 A Go off the record for one second?
 13 (Thereupon, a discussion was
 14 held off the record.)
 15 MR. KOPEL: Back on.
 16 I ask the court reporter to
 17 please mark as Exhibit Number 12 a
 18 document bearing Bates number BHH
 19 LLC.000298 to 304.
 20 (Thereupon, the Document
 21 bearing Bates number BHH LLC.000364 to
 22 379 was marked Deposition Exhibit 12
 23 for Identification, as of this date.)
 24 BY MR. KOPEL:
 25 Q Mr. Mishan, before we get to

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1 Exhibit Number 12, I actually had one more
 2 question I wanted to ask you about Exhibit
 3 Number 11. Do you still have that handy?
 4 A Yes.
 5 Q Do you see any indication that
 6 any of these tests lasted for more than one
 7 day each?
 8 A Could be, but it doesn't state.
 9 Q Do you see on page four or five
 10 it says test date at the top, 2016-01-06?
 11 A Yes.
 12 Q And then page five of 15, these
 13 tests appear to have been conducted this
 14 next day, right, on 2016-01-07?
 15 A That's what it says.
 16 Q On page six, these tests appear
 17 to have been conducted the next day, right?
 18 A That's what it looks like.
 19 Q So it appears from the documents
 20 that these tests were -- none of these tests
 21 could have lasted more than one day, right?
 22 A I don't know. That's --
 23 MR. WING: Object to
 24 foundation.
 25 THE WITNESS: I'm not sure. I

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<p>1 mean, that's what it looks like. 2 Maybe they did it several times during 3 the day. I don't know. I don't know. 4 BY MR. KOPEL: 5 Q Okay. Turning to Exhibit 12, please. 6 A Okay. 7 Q Do you have Exhibit 12? 8 A Yes. 9 Q Have you seen it before? 10 A Yes. 11 Q What is it? 12 A It says efficacy test report, 13 SGS -- oh, sorry, efficacy test report, Bell + 14 Howell animal repellant, efficacy test report, SGS. 15 Q Who commissioned this report? 16 A Intellitec. 17 Q Please take a look at the second 18 page of this document. 19 A Uh-huh. 20 Q Do you see it says at the top 21 here Van Hauser, 230 Fifth Avenue? 22 A Yes, but she may have just put 23 that name there. 24 Q Okay. But Intellitec paid for 25 this report?</p> <p style="text-align: right;">Page 170</p>	<p>1 foundation. 2 THE WITNESS: I don't know. I 3 can see that they -- you know, certain 4 animals like we mentioned, skunk, rat, 5 mouse, raccoon, et cetera, and they 6 did their -- had their test procedure 7 like we stated beforehand on the other one. 8 BY MR. KOPEL: 9 Q But you don't see any tests done 10 without use of a Bell + Howell solar animal 11 repeller, correct? 12 A Like a box -- 13 MR. WING: Object to form. 14 THE WITNESS: Like a box you 15 described before? No, I don't see 16 that comparison. 17 BY MR. KOPEL: 18 Q Please look at page 299, bearing 19 Bates number 299. 20 A Okay. 21 Q This describes a test performed 22 using one skunk, correct? 23 A That's what it seems like. 24 Q And it looks from the test 25 procedure listed on this page that the</p> <p style="text-align: right;">Page 172</p>
<p>1 A Yes. 2 Q Who wrote the protocol for this 3 report? 4 A I believe between Intellitec and 5 SGS. 6 Q Did you or anyone at Van Hauser 7 have any role in writing the protocol for this 8 report? 9 A No. 10 Q Did you have any communications 11 about the protocol before the report was 12 commissioned? 13 A On this one, no. 14 Q Do you know why this report was 15 commissioned? 16 A To do the test report on animal 17 repeller. 18 Q This report was, in all 19 likelihood, run on the animal repellents that 20 had solely ultrasonic sound waves, but not 21 sonic sound waves, correct? 22 A I believe so. 23 Q Do you see any indication in this 24 document that SGS ran any controls testing? 25 MR. WING: Object to form,</p> <p style="text-align: right;">Page 171</p>	<p>1 animal repeller was turned on and then they 2 let an animal walk towards it, into the 3 coverage range, and recorded the reaction. 4 A That's what it seems to say. 5 Q And it looks like the repeller 6 was left on for two days, right, May 13th to 7 May 15th of 2010? 8 A I don't know. It looks like 9 that's the testing period, but you have -- 10 this is the general testing period for skunk -- 11 Q Oh, I see. 12 A -- rats and mice, et cetera. 13 Q I see. 14 So, the indication from this 15 document is that the test that was run was 16 they let an animal walk towards the coverage 17 range one time, and they recorded what they 18 observed, correct? 19 A I don't know about -- 20 MR. WING: Object to form. 21 THE WITNESS: I don't know 22 about the amount of time, because it 23 doesn't state. 24 BY MR. KOPEL: 25 Q But they only -- there's only a</p> <p style="text-align: right;">Page 173</p>

<p>1 report here of what happened one time, right?</p> <p>2 A It seems like it, unless you have</p> <p>3 the same -- mimicked the same type of</p> <p>4 reaction each time. I don't know.</p> <p>5 Q Do we -- did they give any</p> <p>6 indication of how big the coverage area was</p> <p>7 here?</p> <p>8 It appears that the skunk test</p> <p>9 occurred in a zoo, right?</p> <p>10 A Well, it says test location,</p> <p>11 Wanpi World Safari Zoo of Taiwan. I guess,</p> <p>12 as I mentioned, it's not easy to get skunks.</p> <p>13 Did a coverage range, it says, and record</p> <p>14 their reactions. Okay.</p> <p>15 Q Please look at page 300, so I</p> <p>16 believe that's the --</p> <p>17 A Well, actually --</p> <p>18 Q -- third page of --</p> <p>19 A Can I continue?</p> <p>20 Q Yes, please go ahead.</p> <p>21 A 303, I know it says that this --</p> <p>22 well, about 30 feet and 70 degrees, so maybe</p> <p>23 that's -- SGS, that's from a 2008 report.</p> <p>24 So maybe they're using the same range,</p> <p>25 because that's 2008; the other one is 2010.</p> <p style="text-align: right;">Page 174</p>	<p>1 Q We don't know how far the skunk</p> <p>2 went into the testing area, right?</p> <p>3 A Well, as I mentioned, this is a</p> <p>4 2010, it looks like the -- like the -- from</p> <p>5 2008, it stated about 30 feet and 70 degree,</p> <p>6 and stated that -- the other ones. And so</p> <p>7 then they were able to get skunk, which is</p> <p>8 not easy to obtain.</p> <p>9 Oh, sorry. Look below, same</p> <p>10 report. I apologize. No, this is saying when LED</p> <p>11 illuminates -- oh, I'm sorry. I apologize.</p> <p>12 On 300, it says on the same</p> <p>13 report, which has the skunk up top, et</p> <p>14 cetera, note the distance and angle when LED</p> <p>15 illuminates, about 30 feet, 70 degrees. So</p> <p>16 it looks like you do have the distance there.</p> <p>17 BY MR. KOPEL:</p> <p>18 Q Right. So you have the distance</p> <p>19 of the coverage rate for the unit, right?</p> <p>20 A It says over here that this is an</p> <p>21 angle, it looks like that's where they tested from.</p> <p>22 Q Well, we don't know how far into</p> <p>23 that area the skunk went, right?</p> <p>24 A Well, if that's the testing range</p> <p>25 and they're saying that it had a reaction</p> <p style="text-align: right;">Page 176</p>
<p>1 So perhaps that gives you an indication</p> <p>2 about the distance, just to clarify.</p> <p>3 Q Okay. And that's talking about</p> <p>4 the coverage range of the device, right?</p> <p>5 A Looks to me. And it mentions on</p> <p>6 the other one, also, the last page, too.</p> <p>7 Q We don't -- but the animal wasn't</p> <p>8 in an enclosed area. It was in a zoo.</p> <p>9 A I don't know. It says --</p> <p>10 Q It was in a zoo, right?</p> <p>11 A -- zoo.</p> <p>12 You could have a zoo with a very,</p> <p>13 very big -- I've been to the -- been to the</p> <p>14 Bronx Zoo?</p> <p>15 Q Right.</p> <p>16 A Huge.</p> <p>17 Q So we don't know how big or small</p> <p>18 it was, right?</p> <p>19 A Well, it says a zoo. Could be</p> <p>20 very big. We -- maybe you can Google Wanpi</p> <p>21 World Safari Zoo and see how big it is.</p> <p>22 Q See here on page 300, it says the</p> <p>23 skunk walked into the testing area, stopped</p> <p>24 for a while and walked away?</p> <p>25 A Yes, that's what it says.</p> <p style="text-align: right;">Page 175</p>	<p>1 within that testing range, that is the</p> <p>2 testing range.</p> <p>3 Q Right. So it might have been on</p> <p>4 the outer end of that testing range, and it</p> <p>5 might have been on the closer end of that</p> <p>6 testing range. We don't know. Isn't that correct?</p> <p>7 A Well, if they're testing -- seems</p> <p>8 like they're testing for -- you know, from a</p> <p>9 distance, you would assume that it's at the</p> <p>10 30-foot distance.</p> <p>11 Q Okay. And you don't see any data</p> <p>12 that supports that assumption, do you?</p> <p>13 A Why would they mention 30 feet</p> <p>14 and 70 degrees? Why would they mention that</p> <p>15 if they wouldn't test for that range? So I would</p> <p>16 assume it's that. That's a good assumption.</p> <p>17 Q When we see a skunk walk into the</p> <p>18 testing area, we don't know if was 20 feet</p> <p>19 away or five feet away, right?</p> <p>20 A As I mentioned, why would they</p> <p>21 state the 30 feet and 70 degrees? So you</p> <p>22 can make a deduction what you like, but I</p> <p>23 think that's pretty -- pretty conclusive</p> <p>24 that that's what it would be.</p> <p>25 Q Is not the 30 feet and 70 degree</p> <p style="text-align: right;">Page 177</p>

<p>1 the specifications for the coverage rate on 2 this model? Isn't that what that's referring to? 3 A That's the specifications, but I 4 would assume if they do a test, they would 5 do the test for that distance. 6 Q You think that they instructed 7 the animal to stand at exactly that distance? 8 A You saw the other report over 9 there when it showed 29.8 feet, 29.9 feet, 10 30 feet, whatever it is. So the same way 11 they had their study over there, similar 12 fashion they had the study over here. I 13 don't know if they whispered in the animal's 14 ear or not. 15 Q Okay. So we don't know how close 16 it came. You don't see any -- 17 A I didn't say that. 18 Q -- any number here that tells you 19 how close the animal -- 20 A I didn't say that. I'm reading 21 it says about 30 feet, 70 degrees, so I'm 22 assuming that's what it was. 23 Q And that's just by sheer 24 coincidence, the same exact specifications 25 that the model has?</p> <p style="text-align: right;">Page 178</p>	<p>1 I don't know if they're testing 30 feet in 2 every aspect of that 70 degree, but that's 3 the range of the -- I would assume the range 4 of the ultrasonic sound that would, in turn, 5 repel the animal. 6 Q Let's move to rats and mice also 7 on this page. It looks like they tested two 8 of each of these animals, correct? 9 A That's what it looks like. 10 Q And this test was done indoors, right? 11 A I don't know. Let me see. 12 Q See, it says test condition right 13 under -- right under the chart that describes the 14 rats and mice, it says test condition, 15 inside temperature? 16 A Inside temperature, that's what 17 it looks like. It looks they did this one like that. 18 Let me see. Inside temperature. 19 Looks like it. Okay. 20 Q Wouldn't you agree that whether 21 this test is done indoors or outdoors, it 22 plays a significant role? 23 A You asked me before if the animal 24 repel -- some animal repel will repel 25 indoors and outdoors. I said if the person</p> <p style="text-align: right;">Page 180</p>
<p>1 MR. WING: Object to form. 2 THE WITNESS: No. That's what 3 they're testing for. They're testing for what 4 the -- what's stated, 30 feet. So there's no 5 coincidence. That's what they told 6 them to test it for. 7 BY MR. KOPEL: 8 Q Why would -- 9 A That's what it looks like. 10 Q I'm sorry. 11 A That's what it looks like. 12 They're testing for that amount of distance. 13 That's what it looks like the communication 14 probably was between Intellitec and SGS to 15 test for that distance. That's why it's stated. 16 Q Do you understand that 70 degrees 17 is talking about a range, not where something is 18 standing? 19 A Range like this. 20 Q Right. 21 A It's a range on a -- right. 22 Q Do you think the skunk filled up 23 the entire 70-degree range? 24 A They're telling you the range. I 25 don't know. If they're testing for 30 feet,</p> <p style="text-align: right;">Page 179</p>	<p>1 has maybe a squirrel inside the house, they 2 want it to work in both. If there were rats 3 and mice, many times you don't want them in 4 your house. 5 Q So you think some people might be 6 buying this product for use indoors? 7 A Could be. 8 MR. WING: Object to form. 9 THE WITNESS: I don't know. 10 Could be. 11 BY MR. KOPEL: 12 Q All right. You see here rat 13 number one stopped moving, became watchful 14 and moved forward? 15 A Yes. 16 Q Can you explain to me what it 17 means that a rat became watchful? 18 A I don't know. 19 MR. WING: Object to form, foundation. 20 THE WITNESS: This could be, 21 you know, maybe they had it originally 22 in Chinese. I don't know. They translate it. 23 Could be. 24 BY MR. KOPEL: 25 Q Do you see any indication that</p> <p style="text-align: right;">Page 181</p>

1 there was any use of food or any other
 2 plants in the course of this testing?
 3 To clarify, they're asking that
 4 question with regards to the entire Exhibit 12.
 5 A It doesn't state about it. Not
 6 that I see. Okay.
 7 MR. KOPEL: I would like to ask
 8 the court reporter to please mark as
 9 Exhibit Number 13 a document bearing
 10 Bates number BHH LLC.000001 to 69.
 11 (Thereupon, the document
 12 bearing Bates number BHH LLC.000001 to
 13 69 was marked Deposition Exhibit 13
 14 for Identification, as of this date.)
 15 BY MR. KOPEL:
 16 Q Do you have Exhibit Number 13?
 17 A Yes.
 18 Q Have you seen it before?
 19 A Let me look at it.
 20 Q Okay. The question is: Have you
 21 seen it before?
 22 A Yes.
 23 Q What is it?
 24 A It says Bell + Howell ultrasonic
 25 pest report, efficacy test report. You have

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1 two third-party labs.
 2 So you have SGS efficacy test
 3 report: mice/rat. Then it has SGS test
 4 result explanation: mice/rat.
 5 SGS efficacy test report:
 6 spiders, ants, roaches. SGS test result
 7 explanation: spiders, ants, roaches.
 8 Our third-party lab, I think that
 9 over 130 years.
 10 Intertek efficacy test report:
 11 mice/rat. Intertek result explanation:
 12 mice/rat.
 13 Intertek efficacy test report:
 14 spiders, ants, roaches. Intertek result
 15 explanation: spiders, ants, roaches.
 16 I think Intertek's -- I think
 17 that's 138 years that they do for Kraft and
 18 Unilever, multibillion-dollar companies they
 19 do testing for. I think one's 18 billion
 20 and the other one is like \$50 billion
 21 companies. Okay, I'm here.
 22 Q Who commissioned these reports?
 23 A Intellitec.
 24 Q Who wrote the protocol for these
 25 reports?

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1 A I think they discussed between
 2 Intellitec and SGS, and Intellitec and Intertek.
 3 Q Did Van Hauser or Emson have any
 4 role in writing the protocol for these reports?
 5 A Emson or who?
 6 Q Emson or Van Hauser.
 7 A No.
 8 Q See on page one of 17 it says from
 9 individual, first name M-E-I, second name L-V?
 10 A That's what it says.
 11 Q Do you know who she is?
 12 A I don't know if it's a he or a she.
 13 Q Do you know who this individual is?
 14 A No. It says -- it looks like they work
 15 for SGS, because the e-mail is MeiLvSGS.com.
 16 Q Okay. Do you know what their
 17 qualifications are?
 18 A No, but it's a pretty substantial
 19 company; looks like this person works for them.
 20 Q Okay. I'm going to have two
 21 questions, and for each of them you might
 22 want to look through the reports, so I'm
 23 going ask them to you both at once in the
 24 interest of time.
 25 A Okay.

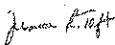
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1 Q Okay. The two questions are: Do
 2 you see any indication that any control
 3 studies were run?
 4 My second question is: Were any
 5 studies run for a period which had a
 6 duration of longer than seven days?
 7 MR. WING: Object to form and
 8 foundation.
 9 THE WITNESS: Well, in regards
 10 to a control study, I mean, again,
 11 that's a relative term.
 12 From my recollection, it was --
 13 there was a pest repeller in one
 14 chamber and a lack of pest repeller in
 15 another chamber. So if you want to
 16 call that a control study, I believe
 17 it is an indication.
 18 And what was your other
 19 question? Oh, I think it was total
 20 actually of 11 days; two days with the
 21 pest repellents totally turned off,
 22 they found that they were equally in
 23 both chambers. Then for seven days,
 24 approximately equal in each chamber.
 25 And then for seven days it was

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47 (Pages 182 - 185)

<p>1 turned on, and they were</p> <p>2 predominantly -- very, very much</p> <p>3 predominantly into the chamber where</p> <p>4 the pest repeller was not.</p> <p>5 And then the -- then the last</p> <p>6 two days they switched it off and then</p> <p>7 it went back to equal amounts. So,</p> <p>8 therefore, proving that pest repellers</p> <p>9 are effective.</p> <p>10 BY MR. KOPEL:</p> <p>11 Q And in each of these tests, the</p> <p>12 pest repellers were on for 11 days, correct,</p> <p>13 for -- excuse me, for seven days, correct?</p> <p>14 A That's what I just described, two</p> <p>15 days off, seven days on, two days off.</p> <p>16 Q Are you aware of any testing</p> <p>17 which measures the efficacy --</p> <p>18 A Efficacy. Efficacy.</p> <p>19 Q -- of either the animal repellers</p> <p>20 or the test repellers?</p> <p>21 A Repeat the question, I'm sorry.</p> <p>22 Sorry to interrupt.</p> <p>23 Q Okay, sure. Are you aware of any</p> <p>24 testing which measures the efficacy of either the</p> <p>25 animal repellers or the pest repellers when</p> <p style="text-align: right;">Page 186</p>	<p>1 you had there, there was certain quantity, I</p> <p>2 don't recall in my head; but I don't have</p> <p>3 the approximate outside of what was produced</p> <p>4 in the document.</p> <p>5 Q Right. And that document only</p> <p>6 reflected one variety of the --</p> <p>7 A Correct.</p> <p>8 Q -- of animal repellers.</p> <p>9 A That was -- yeah, correct.</p> <p>10 That's the prime -- to my recollection,</p> <p>11 that's like the primary.</p> <p>12 Q Okay. How about the pest</p> <p>13 repellers? Do you know approximately what</p> <p>14 the total sales for all varieties were?</p> <p>15 A No.</p> <p>16 Q Do you know if the model with the</p> <p>17 light and the outlet, do you know if that's</p> <p>18 like the best selling model?</p> <p>19 A I don't know if it's the best</p> <p>20 selling. As I mentioned, there were seven</p> <p>21 or eight different, you know, versions, so</p> <p>22 I'm not sure if that was the best selling.</p> <p>23 Q To your knowledge, has Van Hauser</p> <p>24 or Emson sold either the pest repellers or</p> <p>25 the animal repellers to any retailers</p> <p style="text-align: right;">Page 188</p>
<p>1 used for a duration of longer than seven days?</p> <p>2 A This study -- two studies, two</p> <p>3 separate studies, did it for two days off,</p> <p>4 seven days on, two days off. So that's two</p> <p>5 independent studies, so that's what's</p> <p>6 indicated over here. That's the duration of</p> <p>7 the study.</p> <p>8 Q Are you aware of any studies</p> <p>9 which examine the efficacy of either the</p> <p>10 pest repellers or the animal repellers when</p> <p>11 used for a longer duration than one week?</p> <p>12 A Not that I'm familiar with.</p> <p>13 Q Okay.</p> <p>14 MR. KOPEL: Let's go off the</p> <p>15 record, please.</p> <p>16 (Thereupon, a discussion was</p> <p>17 held off the record.)</p> <p>18 BY MR. MISHAN:</p> <p>19 Q Mr. Mishan, I just have a few</p> <p>20 more questions.</p> <p>21 A Okay.</p> <p>22 Q Do you have any estimate of the</p> <p>23 approximate total sales for all versions of</p> <p>24 the animal repellers since 2011?</p> <p>25 A No. I mean, from the document</p> <p style="text-align: right;">Page 187</p>	<p>1 outside of the United States?</p> <p>2 A I think both, I mean more than</p> <p>3 primarily. 99 percent, 90 percent, something, in the</p> <p>4 United States.</p> <p>5 Q Do you know of any sales outside</p> <p>6 the United States?</p> <p>7 A Maybe some shipped to Canada at</p> <p>8 one point, maybe a small quantity. I don't know.</p> <p>9 Q But, is that speculation or do</p> <p>10 you have a memory of shipping some to Canada?</p> <p>11 A No. I'm saying maybe, maybe some</p> <p>12 shipped to Canada. I think primarily,</p> <p>13 primarily it's the United States. Could be.</p> <p>14 Q Would you have documents</p> <p>15 reflecting whether any were shipped to Canada?</p> <p>16 A They would be in the documents</p> <p>17 there.</p> <p>18 Q What retailer would be located in</p> <p>19 Canada?</p> <p>20 A I'm trying to remember. I don't</p> <p>21 recall, but if it was anything, I think it was very</p> <p>22 small, from my recollection. What does</p> <p>23 United States have to do with Canada?</p> <p>24 Q Are there presently commercials</p> <p>25 being run advertising the animal repellers?</p> <p style="text-align: right;">Page 189</p>

1 CERTIFICATION
2
3 I, Jessica R. Taft, a Notary Public for
4 and within the State of New York, do hereby
5 certify:
6 That the witness whose testimony as
7 herein set forth, was duly sworn by me; and
8 that the within transcript is a true record
9 of the testimony given by said witness.
10 I further certify that I am not related
11 to any of the parties to this action by
12 blood or marriage, and that I am in no way
13 interested in the outcome of this matter.
14 IN WITNESS WHEREOF, I have hereunto set
15 my hand this 7th day of February, 2016.
16
17
18
19 
20 Jessica R. Taft
21 Commission Number 01TA6041411
22 Expires: 05/08/2018
23
24
25

[& - 7th]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.